

---

**Supreme Court of the United States**

October Term, 1976

No.

**76-1103**

RAMSEY CLARK,

*Appellant-Petitioner,*

and

UNITED STATES OF AMERICA,

*Intervenor,*

v.

FRANCIS R. VALEO,

EDMUND L. HENSHAW, JR.,

and

FEDERAL ELECTION COMMISSION,

*Appellees-Respondents.*

---

FROM THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE  
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

---

APPENDIX

Volume I

---

Larry P. Ellsworth

Alan B. Morrison

Girardeau A. Spann

Counsel for Appellant-

Petitioner Clark

Suite 700

2000 P Street, N.W.

Washington, D.C. 20036

(202) 785-3704

CONTENTS  
Volume I

<u>Item</u>	<u>Page</u>
DOCKET ENTRIES – District Court . . . . .	2a
DOCKET ENTRIES – Court of Appeals . . . . .	10a
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF OF RAMSEY CLARK . . . . .	14a
COMPLAINT IN INTERVENTION OF THE UNITED STATES OF AMERICA . . . . .	22a
ANSWER OF DEFENDANT VALEO . . . . .	28a
ANSWER OF DEFENDANT EDMUND L. HENSHAW, JR. . . . .	38a
ANSWER OF FEDERAL ELECTION COMMISSION . . . . .	47a
AMENDED ANSWER OF FRANCIS R. VALEO . . . . .	51a
ORDER OF SEPTEMBER 3, 1976, CERTIFYING CONSTITUTIONAL QUESTIONS AND INCORPORATING FINDINGS OF FACT . . . . .	52a
STIPULATION OF FINDINGS OF FACT INCORPORATED INTO SEPTEMBER 3, 1976 ORDER. . . . .	55a
PARTIAL TRANSCRIPT OF F.E.C. MEETING OF JULY 8, 1976 . . . . .	73a
JUDGMENT OF JANUARY 21, 1977 OF THREE-JUDGE DISTRICT COURT DISMISSING CASE . . . . .	79a

Volume II

OPINION OF JANUARY 21, 1977 OF THE COURT OF APPEALS (EN BANC) . . . . .	1
---	---

Volume III

FEDERAL ELECTION CAMPAIGN LAWS . . . . .	1
--	---

## DOCKET ENTRIES - District Court

Date	Nr.	Proceedings
<u>1976</u>		
July 1		COMPLAINT; appearance.
July 1		MOTION by pltf. to convene a Three-Judge Court.
July 1		MOTION by pltf. to reduce defts. time to answer complaint from 60 days to 30 days.
July 1		MOTION for certification of constitutional questions to the Court of Appeals; memorandum of P&A's.
July 1		SUMMONS, copies (5) and copies (5) of complaint issued: deft. #3 serv. 7-14; AG serv. 7-6; DA serv. 7-2; #1 serv. 7-20
July 27		STATEMENT OF P&A's by the Federal Electric [sic] Commission in support of opposition to pltf's. motion to shorten the time for answer and its opposition to pltf's. motion for certification of constitutional questions; c/m 7-26.
July 27		POINTS and authorities by the Federal Election Commission in opposition to pltf's. application to convene a Three-Judge Court; c/m 7-26.
July 30		MEMORANDUM by pltf. [sic] in opposition to pltf's. motion for certification of constitutional questions to the Court of Appeals; (2) application for a Three-Judge Court; and (3) motion to reduce defts. time to answer complaint; c/m 7-29.
Aug 3		DEFENDANT #2 serv. 12.

Aug 4	SUPPLEMENTAL P&A's by deft. #3 in support of opposition to pltf's. motion for immediate certification of constitutional questions; c/s 8-4. Appearance of John G. Murphy, Jr., William Oldaker, and Charles N. Steele.
Aug 6	MOTION of United States to intervene as a party pltf.; exhibit; P&A's; c/s 8-6. Government - no fee. (Appearance of Alexis Panagakos, Dept. of Justice, Wash., D.C. 20530 - 739-3336)
Aug 6	MOTION by applicant for intervention to shorten time; c/s 8-6.
Aug 10	RESPONSE by pltf. to motion of United States to intervene; c/s 8-10.
Aug 10	REQUESTS by pltf. for admission by defts.; c/s 8-10.
Aug 10	RESPONSE by pltf. to defts. memoranda in opposition; c/s 8-10.
Aug 11	POINTS and authorities by deft. #3 in support of opposition to the motion of the Attorney General to shorten time to respond to the motion to intervene; c/s 8-11.
Aug 13	MOTION by pltf. to convene a Three-Judge Court argued in part and rescheduled until August 30, 1976 at 9:30 a.m. (Rep: T. Dourian) Richey, J.
Aug 13	COURT directed legislative defts. to respond to motion of United States to intervene by August 18, 1976. (Rep: T. Dourian) Richey, J.
Aug 13	COURT directed defts. to answer complaint and respond to requests for admissions by

August 23, 1976; plaintiff to reply by August 27, 1976. (Rep. T. Dourian)

Richey, J.

- Aug 13 COURT directed defts. to file Memorandum of Law and Proposed Findings of Fact for certification by August 25, 1976; plaintiff to reply by August 27, 1976 at 5:00 p.m. (Rep: T. Dourian) Richey, J.
- Aug 13 MOTION by defts. for leave to file motion to dismiss by August 18, 1976, granted; plaintiffs to reply by August 23, 1976. Hearing on motion to dismiss set for August 30, 1976. (Rep: T. Dourian) Richey, J.
- Aug 13 APPEARANCE of Eugene Gressman as attorney for deft. Edmund L. Henshaw, Jr. CD/N
- Aug 17 ORDER filed 8-13-76 holding pltfs. request for a Three-Judge Court in abeyance until 8-30-76; directing each deft. to answer the complaint by 8-23-76; directing defts. file by 8-25-76 a response to pltfs. request for admissions; a joint statement of questions which they wish to have certified to the Court of Appeals; a joint statement of proposed findings and a joint statement of genuine issues; plaintiff to respond to said findings by 8-27-76; setting hearing on pltfs. motions for certification and for a Three-Judge Court on 8-30-76, 9:30 a.m. allowing defts. to file motion to dismiss by 8-18-76; allowing pltf. to respond to motion to dismiss by 8-23-76; allowing defts. to file additional opposition to the motion of U.S. to intervene by 8-18-76;

allowing U.S. to respond to said opposition by 8-30-76. (N) Richey, J.

- Aug 19 MEMORANDUM of deft. Henshaw opposing application for intervention; c/s 8-18.
- Aug 19 MOTION by deft. Henshaw to dismiss; P&A's; c/s 8-18.
- Aug 19 MOTION by deft. Francis R. Valeo to dismiss; memorandum; attachment; c/s 8-18.
- Aug 19 MEMORANDUM of deft. Valeo in opposition to application for intervention; Appendix A; c/s 8-18. Appearance of Cornelius B. Kennedy.
- Aug 19 MOTION by the Federal Election Commission to dismiss; P&A's; c/s 8-18.
- Aug 20 REPLY of the United States of America, applicant-intervenor, to defts' opposition to motion of the U.S. to intervene; Appendix A; c/s 8-20-76.
- Aug 23 ANSWER of deft. #2 to complaint; c/m 8-23-76. Appearance of Eugene Gressman.
- Aug 23 ANSWER of deft. #1 to complaint; Exhibit A & B; c/m 8-23-76. Appearance of Cornelius B. Kennedy.
- Aug 23 RESPONSE of pltf. to defts' motions to dismiss; c/s 8-23-76.
- Aug 24 RESPONSE of deft. Federal Election Commission's to the motion of the Attorney General to intervene on behalf of pltf; c/s 8-23-76.



Aug 24 ANSWER of deft., Gederal [sic] Election Commission to complaint; c/s 8-23-76. Appearance of Charles N. Steele.

Aug 25 JOINT statement of proposed Findings of Fact by defts for certification; c/s 8-23-76.

Aug 25 JOINT admissions and statement of additional facts by defts in response to pltffs request for admissions; c/s 8-23-76.

Aug 26 SUPPLEMENTAL memorandum of deft. Valeo in opposition to application for intervention; c/s 8-26-76.

Aug 31 RESPONSE by pltf. to defts. joint statements; List of sources for findings of fact; c/s 8/27/76.

Aug 31 PROPOSED CONSTITUTIONAL Questions by pltf.-intervenor United States of America to be certified to Court of appeals; c/s 8/31/76.

Aug 31 AMENDED motion by pltf. for certification of constitutional questions and for certification of findings of fact; c/s 8/31/76.

Aug 31 PROPOSED Findings and fact by pltf.-intervenor United States of America; c/s 8/31/76.

Aug 31 ORDER filed 8-27-76 granting motion of the United States to intervene. (N)  
Richey, J.

Sept 1 COMPLAINT by pltf.-intervenor, the United States of America. Appearance of Rex E. Lee, Earl J. Silbert, David J. Anderson, and Dennis Linder and Alexis Panagakos.

Aug 30 MOTION to convene a Three-Judge Court heard and taken under advisement; counsel directed to confer and report to the Court; further hearing set 9-1-76 at 10:00 a.m. (Rep: T. Dourian)  
Richey, J.

Sept 2 AMENDED answer of Francis R. Valeo, Secretary of the Senate; c/s 9-2.

Sept 3 ORDER granting pltfs. motion for certification of certain constitutional questions; certifying "Stipulation as to findings of Fact" as this Court's findings of fact necessary for certification; directing the Clerk of the District Court to deliver forthwith to the Clerk of the Court of Appeals the record in this action. (N)  
Richey, J.

Sept 3 NOTICE in re application for a three-judge Court to the Chief Judge of the U.S. Court of Appeals. (FIAT)(N)  
Richey, J.

Sept 3 EXPLANATORY memorandum to the Court of Appeals en banc; Appendix A and B. (FIAT) (N)  
Richey, J.

Sept 3 STIPULATION as to findings of fact.

Sept 3 ORDER granting leave to the parties to supplement the record in this case with transcripts of portions of relevant meetings of the Federal Election Commission. (N)  
Richey, J.

Sept 3 RECORD delivered to USCA pursuant to 2 USC 437h(a) and Order filed 9-3-76; receipt acknowledged. (76-1825)

Sept 7 ORDER directing that a certain line be inserted on page 2 of the Order of Sept. 3,

1976 certifying constitutional questions to the U.S. Court of Appeals; directing the clerk to transmit this Order to the U.S. Court of Appeals. (N) Richey, J.

Sept 2 STATUS CALL. Certain stipulated findings and questions presented to the Court. (Rep: T. Dourian) Richey, J.

Sept 7 ORDER of insertion transmitted to U.S. Court of Appeals; receipt ackn.

Sept 3 DESIGNATION of the Honorable Harold Leventhal and the Honorable Malcolm R. Wilkey, United States Circuit Judges to serve with the Honorable Charles R. Richey United States District Judge, as members of the Court to hear and determine this action.

Bazelon, Chief  
Judge, U.S.C.A.

Sept 3 AMENDED designation of a Judge to serve on Three-Judge District Court by designating the Honorable J. Skelly Wright, United States Circuit Judge to serve in place and stead of the Honorable Malcolm R. Wilkey as a member of the three-judge Court, Wright, J.,  
USCA

Sept 09 MEMORANDUM by defts. #1 and #2 to the Court; attachments (2); c/m 9-9-76.

Sept 9 ORDER filed September 7, 1976 setting hearing 9/10/76, 2:00 P.M.; directing parties to file with the clerk three copies of all briefs with respect to Subtitle H in accordance with the briefing schedule established by the U.S. Court of Appeals; allowing parties leave to file with the Clerk of this Court any additional briefs

addressing jurisdictional or other issues under Subtitle H by 4:00 P.M. on 9/8/76. (N)

Richey, J.

Leventhal, J., USCA

Wright, J. USCA

Sept 8 MOTION by pltf. Clark for summary judgment; c/s 9-8.

Sept 8 BRIEF by pltf. Ramsey Clark.

Sept 8 MEMORANDUM to the Court by intervenor, USA; c/m 9-8.

Sept 8 BRIEF by intervening pltf., United States.

Sept 7 CERTIFIED copy of Order from USCA that this matter is preliminarily deemed to have been properly certified to this court by the District Court pursuant to 437(a) & this court shall proceed to consider the instant matter en banc, in accord with precedent established by this Court in Buckley v. Valeo, 519 F.2d 817 & 519 F.2d 821 (1975), affirmed in part [sic] and reversed in part (on other grounds), 424 U.S. 1 (1976). It appearing to the Court that pltf. Clark is a participant in a party primary election for nomination as U.S. Senator from N.Y., which election is to be held on 9/14/76, expedition is required; and ordered that a hearing be held on 9/10/76 at 2:00 P.M. on the certification; and Order by the court that all briefs upon the matters to be argued 9/10/77 shall be filed no later than the close of business, 9/8/76 and further Ordered that on 9/8/76 the Federal Election Commission shall provide to the Clerk of this Court 10 copies of its publication

"Federal Election Campaign Laws (June 1976)", and ten copies of the proposed regulations referred to Congress by the Commission 8/3/76 and presently lying before Congress.

Sept 14 NOTICE by pltf. Clark of filing two additional copies of certain documents; c/m 9-13.

Sept 28 TRANSCRIPT of proceedings of August 13, 1976, pages 1-55. (Rep: T. Dourian); Court copy.

Sept 28 TRANSCRIPT of proceedings of August 30, 1976, pages 56-111. (Rep: T. Dourian); Court copy.

Oct 13 EXTRACT from Transcript of proceedings of Sept. 10, 1976, pages 1-7; attachment. (Rep: T. Dourian); Court copy.

1977

Jan 26 JUDGMENT filed on 1-21-77 dismissing action and dissolving Three-Judge Court. (N)  
Wright, J., USCA  
Leventhal, J., USCA  
Richey, J., USDC

Feb. 7 NOTICE of Appeal from Order of Jan. 26, 1977.

DOCKET ENTRIES – Court of Appeals

<u>Date</u>	<u>Filings—Proceedings</u>	<u>Filed</u>
9-3-76	Certified Original Record (no transcript) from the United States District Court—(Certified to this Court pursuant to Title 2 USC 437h (a) (n-4))	
9-3-76	4-Plaintiff's motion for expedited briefing schedule (p-3)	
9-3-76	Per Curiam order that this matter is prelimina-	

rily deemed to have been properly certified to this Court by the District Court pursuant to §437 h(a) and this court shall proceed to consider the instant matter en banc, in accord with precedent established by this Court in Buckley v. Valeo, 519 F. 2d 817 and 519 F.2d 821 (1975), affirmed in part and reversed in part (on other grounds) 424 U.S. 1 (1976); a hearing will be held on September 10, 1976 at 2:00 p.m. on the certification; the parties having addressed these questions in their presentations to the District Court such expedition should not be unduly burdensome; all briefs upon the matters to be argued on Friday, September 10, 1976 shall be filed no later than the close of Business Wednesday, September 8, 1976; September 8, 1976, the Federal Election Commission shall provide to the Clerk of this Court ten copies of its publication "Federal Election Campaign Laws (June 1976) and ten copies of the proposed regulations referred to congress by the Commission on August 3, 1976 and presently lying before Congress; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb and Wilkey, CJ'

09-3-76	Certified copy of the above order sent to Clerk, U.S. District Court and a copy sent to Judge Richey
09-7-76	Certified original supplemental record (n-4)
09-8-76	11-Plaintiff's motion to lodge copies of report (p-8) (Filed by Clark)
09-8-76	25-Plaintiff's (Ramsey Clark) brief (p-8)



09-8-76 25-Plaintiff's (United States) brief (p-8)  
 09-8-76 25-Defendant's (Francis R. Valeo) brief (p-8)  
 09-8-76 25-Defendant's (Edmund L. Henshaw, Jr.) brief (p-8)  
 09-8-76 11-Defendant's (Federal Election Commission) motion for leave to file typewritten briefs (p-8)  
 09-8-76 11-Defendant's (Federal Election Commission) submission in compliance with Court order (p-8)  
 09-8-76 11-Defendant's (Federal Election Commission) motion to dismiss the action and remand to the District Court as improperly certified (p-8)  
 09-9-76 Clerk's order granting motion of the Federal Election Commission for leave to file typewritten briefs  
 09-9-76 11-Brief of Federal Election Commission's (p-8)  
 09-9-76 Clerk's order, sua sponte, that oral argument in this case presently scheduled on September 10, 1976 to begin at 2 p.m., instead, will commence on the same date at 2:30 p.m.  
 09-9-76 25-Defendant's (Federal Election Commission) brief (p-9)  
 09-9-76 11-Plaintiff's (United States) motion for enlargement of time for oral argument (p-9)  
 09-10-76 Argued before CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb and Wilkey, CJ en banc; At the outset the court announced that Circuit Judge Robb is a member of this en banc hearing, but is unable to be present. The case will be submitted to him on the briefs and tape recording of oral argument

10-13-76 11-Appellee's (Federal Election Commission) motion for leave to file additional materials (m-12)  
 10-15-76 Clerk's order granting appellee's (Federal Election Commission) motion for leave to file additional materials  
 10-15-76 11-Appellee's (Federal Election Comm.) additional materials (m-12)  
 1-21-77 Opinion Per Curiam.  
 1-21-77 Concurring opinion in which Chief Judge Bazelon and Circuit Judge Wright Join, filed by Circuit Judge Tamm.  
 1-21-77 Concurring opinion filed by Circuit Judge Leventhal.  
 1-21-77 Dissenting opinion filed by Circuit Judge Robinson.  
 1-21-77 Dissenting opinion filed by Circuit Judge MacKinnon.  
 1-21-77 Judgment returning the Certified Question to the District Court with instructions to dismiss. (n)  
 1-21-77 Per Curiam order amending opinion. (majority opinion)  
 1-24-77 Per Curiam order amending Judge Robinsons dissenting opinion and Judge MacKinnons dissenting opinion.  
 2-7-77 11-Plaintiffs' Notice of Appeal to the United States Supreme Court from the decision and judgment of Jan. 21st.  
 2-8-77 Certified copy of plaintiff's notice of appeal to the United States Supreme Court from the decision and judgment of Jan. 21st were mailed to all parties and the Clerk Supreme Court.



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Caption omitted in printing]

[Dated July 1, 1976]

Civil Action No. 76-1227

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

1. This action seeks declaratory and injunctive relief from certain provisions of the Federal Election Campaign Act of 1971, 2 U.S.C. §§ 431, *et seq.*, as amended, (hereinafter the "FECA") and Subtitle H of the Internal Revenue Code of 1954, 26 U.S.C. §§ 9001 *et seq.*, as amended, (hereinafter "Subtitle H") and against their administration and enforcement by defendants, on the grounds that these provisions, which allow a single House of Congress to disapprove regulations of the defendant FEDERAL ELECTION COMMISSION ("COMMISSION"), violate the constitutional doctrine of separation of powers and destroy the constitutional system of checks and balances established by Articles I, II and III of the United States Constitution and deprive plaintiff of Due Process of Law under the Fifth Amendment of the United States Constitution.

JURISDICTION

2. This Court has jurisdiction under 2 U.S.C. § 437h, 26 U.S.C. § 9011(b), and 28 U.S.C. § 1331. The amount in controversy, exclusive of interests and costs, exceeds \$10,000.

3. Convocation of a three judge district court is required by 26 U.S.C. § 9011 and 28 U.S.C. § 2282, with respect to those issues concerning Subtitle H. Certification to the

United States Court of Appeals for the District of Columbia Circuit is required by 2 U.S.C. § 437h with respect to all other issues.

PARTIES

4(a). Plaintiff RAMSEY CLARK is a candidate for the Democratic Party nomination for United States Senator from the State of New York. He is a citizen of the State of New York and of the United States and is eligible to vote in elections for the office of the President of the United States. He is a registered voter in the State of New York in the Democratic Party.

4(b). In the primary for the Democratic nomination for Senator, plaintiff CLARK is opposed by, among others, Bella Abzug, a sitting Member of the United States House of Representatives. As a Member of the House of Representatives, Ms. Abzug is authorized to, has and will continue to vote on whether to disapprove certain regulations of the FEDERAL ELECTION COMMISSION effecting elections for the United States Senate. In the general election, plaintiff CLARK will be opposed by, among others, James Buckley, a sitting Member of the United States Senate from the State of New York. As a Member of the Senate, Mr. Buckley is authorized to, has and will continue to vote on whether to disapprove regulations of the FEDERAL ELECTION COMMISSION when they effect elections to the United States Senate.

5. Defendant FRANCIS R. VALEO is the duly appointed Secretary of the United States Senate whose duties include furnishing certain services and facilities to and cooperating with the FEDERAL ELECTION COMMISSION in carrying out the COMMISSION's duties. 2 U.S.C. § 438(d)(2). He is also custodian for the COMMISSION of certain reports

and statements submitted pursuant to rules and regulations prescribed by the COMMISSION. 2 U.S.C. § 438(d)(1).

Defendant VALEO is an *ex officio* Member of the FEDERAL ELECTION COMMISSION. 2 U.S.C. § 437c(a)(1).

6. Defendant EDMUND L. HENSHAW, Jr., is the duly appointed Clerk of the United States House of Representatives whose duties include furnishing certain services and facilities to and cooperating with the FEDERAL ELECTION COMMISSION in carrying out the COMMISSION's duties. 2 U.S.C. § 438(d)(2). He is also custodian for the COMMISSION of certain reports and statements submitted pursuant to rules and regulations prescribed by the COMMISSION. 2 U.S.C. § 438(d)(1). Defendant HENSAW is an *ex officio* Member of the FEDERAL ELECTION COMMISSION. 2 U.S.C. § 437c(a)(1).

7. Defendant FEDERAL ELECTION COMMISSION was established by § 208(a), Pub. L. 93-443, 88 Stat. 1280, and reconstituted by 2 U.S.C. § 437c. In addition to defendants VALEO and HENSHAW, who are *ex officio* members without a right to vote, the COMMISSION is composed of six voting members appointed by the President of the United States, by and with the advice and consent of the Senate. 2 U.S.C. § 437c.

#### THE STATUTORY FRAMEWORK

8. The FEDERAL ELECTION COMMISSION has very broad powers, including the powers to: (a) investigate with the aid of compulsory process; (b) exercise exclusive primary jurisdiction with respect to civil enforcement of the FECA and Subtitle H by bringing actions in the federal courts, including actions for declaratory, injunctive, damage or civil fine relief; (c) refer violations to the Attorney General

for possible criminal prosecution; (d) formulate general policy with respect to the FECA and Subtitle H, including all criminal provisions contained in those statutes; and (e) render advisory opinions. 2 U.S.C. §§ 438(a)(10).

9. The COMMISSION is empowered to prescribe rules and regulations to carry out the provisions of the FECA and Subtitle H. 2 U.S.C. §§ 438(a)(10) and 438(d) and 26 U.S.C. §§ 9009 and 9039.

10. Before any such rule or regulation may be put into effect, the COMMISSION must transmit to the Senate or the House of Representatives, as the case may be, a statement setting forth the proposed rule or regulation and a detailed explanation of it. 2 U.S.C. § 438(c)(1) and 26 U.S.C. §§ 9009(c)(1) and 9030(c)(1).

11. Statements concerning a rule or regulation dealing with required reports or statements by a candidate for the office of Senator, and by political committees supporting such a candidate, must be transmitted to the Senate. Statements concerning a rule or regulation dealing with required reports or statements by a candidate for the office of Representative, Delegate, or Resident Commissioner, and by political committees supporting such a candidate, must be transmitted to the House of Representatives. 2 U.S.C. § 438(c)(3).

12. All other statements must be transmitted to both the House of Representatives and the Senate. 2 U.S.C. § 438(c) and 26 U.S.C. §§ 9009(c) and 9039(c).

13. If within 30 legislative days after receipt of such a statement, a body of the Congress disapproves the rule or regulation, or any portion thereof which the body determines to be a single separable rule of law, then the COMMISSION may not put into effect such rule or regu-

lation, or portion thereof which has been disapproved. 2 U.S.C. § 438(c)(2), (c)(4) and 26 U.S.C. §§ 9009(c)(2), (c)(4) and 9039(c)(2), (c)(4).

#### THE APPLICATION OF THE CONGRESSIONAL VETO

14. On July 30, 1975, the FEDERAL ELECTION COMMISSION referred to both the House of Representatives and the Senate a regulation pertaining to office accounts, usually consisting in part of excess campaign funds, used by Members of Congress to support their activities. A modified version of the regulation, intended to comply with certain suggestions made by Members of Congress, was transmitted to both the House of Representatives and the Senate on September 30, 1975. On October 8, 1975, the Senate by a single vote rejected a resolution the effect of which would have been to approve the modified version of the regulation. Senator James Buckley, who himself has an office account, voted against the measure. The Senate by voice vote then disapproved both regulations, ordering the Secretary of the Senate, defendant VALEO, to transmit a copy of the disapproval resolution to the defendant COMMISSION. S. Res. 275, 94th Cong., 1st Sess., 121 Cong. Rec. 17888 (daily ed. Oct. 8, 1975).

15. On August 1, 1975, the FEDERAL ELECTION COMMISSION referred to both the House of Representatives and the Senate a regulation providing for the filing of all reports and statements in the first instance with the COMMISSION, instead of allowing members of the House of Representatives and the Senate the special privilege of filing in the first instance with the Clerk of the House and the Secretary of the Senate, respectively, which privilege delays for at least a week reporting and investigations

by the FEDERAL ELECTION COMMISSION. On October 22, 1975, the House of Representatives disapproved the regulation, ordering the Clerk of the House, defendant HENSHAW'S predecessor, to transmit a copy of the disapproval resolution to the defendant COMMISSION. H.R. Res. 780, 94th Cong., 1st Sess., 121 Cong. Rec. 10197 (daily ed. Oct. 22, 1975). Representative Bella Abzug, an opponent of plaintiff CLARK in the New York primary for the Democratic Party nomination for Senator, voted to disapprove the regulation.

16. Several other regulations, including a third version of the office accounts regulation, were referred to the appropriate body of the Congress prior to the Supreme Court's Jan. 30, 1976 decision in *Buckley v. Valeo*, Nos. 75-436 and 75-437. These regulations had not been disapproved, and thirty legislative days had not run, on the date of the aforementioned decision. Subsequently, Congress provided that even rules or regulations adopted by the COMMISSION before the date of enactment of the 1976 amendments to the FECA would not be effective unless they were thereafter subjected to the Congressional veto system. 2 U.S.C. § 437c(g)(3). No such rules or regulations have been re-submitted.

17. Certain proposed rules and regulations are presently being considered by the FEDERAL ELECTION COMMISSION, but they have not yet been approved by the COMMISSION or referred to any body of the Congress.

18. Any rules or regulations approved by the FEDERAL ELECTION COMMISSION will be referred to the appropriate body of Congress and, if disapproved by that body, the rules or regulations will not be put into effect by the COMMISSION.



19. Because of the necessity of avoiding a vote of disapproval by a body of Congress, the COMMISSION has and will continue to modify proposed rules and regulations to correspond with what its members perceive to be the desires and wishes of Members of Congress, sometimes modifying proposed rules and regulations in such a way as to give incumbent candidates for Congress an advantage in elections over non-incumbent candidates for Congress.

#### CAUSES OF ACTION

20. The FECA and Subtitle H deprive the plaintiff of his constitutional rights by allowing a single House of Congress to disapprove rules and regulations, or selected portions of such rules and regulations, adopted by the FEDERAL ELECTION COMMISSION, and by denying the President of the United States the opportunity to veto such Congressional actions, in violation of the constitutional separation of powers and checks and balances established by Articles I, II and III of the United States Constitution.

21. The FECA and Subtitle H deprive plaintiff of his constitutional rights to have laws affecting him enacted by the full legislative process, including passage by both Houses of Congress with the opportunity for a Presidential veto, and invidiously discriminate against plaintiff by allowing incumbent office-holders, but not challengers, to veto rules and regulations of the COMMISSION, in violation of plaintiff's Right to Due Process of Law under the Fifth Amendment of the United States Constitution.

22. The FECA and Subtitle H deprive plaintiff of his constitutional rights by unconstitutionally delegating the discretion to disapprove regulations of the COMMISSION to a single House of Congress and by delegating such discretion without giving any standards or criteria to govern

the exercise of such discretion and without requiring any statement of reasons for the exercise of such discretion.

23. Unless application of those provisions to the FECA and Subtitle H which allow bodies of Congress to disapprove of rules and regulations adopted by the FEDERAL ELECTION COMMISSION are enjoined by the court, plaintiff will suffer irreparable injury and will suffer unconstitutional impairment of his rights to vote, to participate effectively in the political process and to compete without discrimination in the electoral process.

#### PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that the court immediately (a) make application for a three-judge district court to hear the issues raised by this complaint concerning Subtitle H, and (b) certify to the United States Court of Appeals for the District of Columbia Circuit all issues of constitutionality raised by this complaint concerning the FECA, and that such courts:

1. advance on the docket and expedite this action to the greatest extent possible as provided in 2 U.S.C. § 437h and 26 U.S.C. § 9011(b)(2);

2. order, adjudge, decree and declare that the FECA and Subtitle H provisions allowing bodies of Congress to disapprove of regulations adopted by the FEDERAL ELECTION COMMISSION are repugnant to the Constitution of the United States, and that said statutes violate plaintiff's rights under the Constitution of the United States;

3. permanently enjoin and restrain defendants, their agents and assistants from transmitting rules or regulations to any body of Congress pursuant to the foregoing provisions of the FECA and Subtitle H and require defendant



FEDERAL ELECTION COMMISSION to prescribe rules and regulations upon their adoption by it;

4. award plaintiff costs and disbursements in this action; and

5. grant such other and further relief as may be just and proper.

/s/ Larry P. Ellsworth  
Larry P. Ellsworth

/s/ Alan B. Morrison  
Alan B. Morrison

2000P Street, N.W., Suite 700  
Washington, D.C. 20036

Dated: Washington, D.C. (202) 785-3704  
July 1, 1976 Counsel for Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Caption omitted in printing]

[Dated Aug. 6, 1976] Civil Action No. 76-1227

COMPLAINT IN INTERVENTION

The United States of America, Plaintiff-Intervenor herein, for its pleading in intervention, alleges as follows:

1. By his complaint, filed July 1, 1976, plaintiff Ramsey Clark has drawn into question the constitutionality of the legislative veto provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §438(c) and subtitle H of the Internal Revenue Code of 1954, 26 U.S.C. §§ 9009(c) and 9039(c).

2. Defendants in the action are Francis R. Valeo, Secretary of the United States Senate, Edmund L. Henshaw, Jr., Clerk of the United States House of Representatives, and the Federal Election Commission, an agency of the United States.

3. Upon information and belief, none of the existing parties will adequately represent the interest and the position of the Executive Branch that the aforesaid statutory provisions are unconstitutional; therefore, unless intervention is granted the United States will not be able adequately to present, nor will the Court have the benefit of, its participation regarding, and views on, those important issues.

JURISDICTION

4. This Court has jurisdiction under 28 U.S.C. §1345.

5. Relief is requested pursuant to the Declaratory Judgment Act, 28 U.S.C. §§2201, 2202.

PARTIES

6. On information and belief, plaintiff RAMSEY CLARK, a citizen of New York, is a candidate for United States Senator from the State of New York and is eligible to vote in elections for the office of the President of the United States.

7. Defendant FRANCIS R. VALEO is the duly appointed Secretary of the United States Senate, whose duties include furnishing certain services and facilities to and cooperating with the FEDERAL ELECTION COMMISSION in carrying out the COMMISSION'S duties. 2 U.S.C. §438(d)(2). He is also custodian for the COMMISSION of certain reports and statements submitted pursuant to rules and regulations

prescribed by the COMMISSION. 2 U.S.C. §438(d)(1). Defendant VALEO is an *ex officio* Member of the FEDERAL ELECTION COMMISSION. 2 U.S.C. §437c(a)(1).

8. Defendant EDMUND L. HENSHAW, JR., is the duly appointed Clerk of the United States House of Representatives, whose duties include furnishing certain services and facilities to and cooperating with the FEDERAL ELECTION COMMISSION in carrying out the COMMISSION's duties. 2 U.S.C. §438(d)(2). He is also custodian for the COMMISSION of certain reports and statements submitted pursuant to rules and regulations prescribed by the COMMISSION. 2 U.S.C. §438(d)(1). Defendant HENSHAW is an *ex officio* Member of the FEDERAL ELECTION COMMISSION. 2 U.S.C. §437c(a)(1).

9. Defendant FEDERAL ELECTION COMMISSION was established by §208(a), Pub. L. 93-443, 88 Stat. 1280, and reconstituted by 2 U.S.C. §437c Pub. L. 94-283, 90 Stat. 475. In addition to defendants VALEO and HENSHAW, who are *ex officio* members without a right to vote, the COMMISSION is composed of six voting members appointed by the President of the United States, by and with the advice and consent of the Senate. 2 U.S.C. §437c.

10. The UNITED STATES OF AMERICA intervenes herein to urge this Court to declare that 2 U.S.C. 438(c)(2) and (c)(4), 26 U.S.C. 9009(c)(2) and (c)(4), and 26 U.S.C. 9039(c)(2) and (c)(4), impermissibly intrude upon those areas reserved by the Constitution of the United States to the Executive Branch of the United States.

### THE STATUTORY SCHEME

11. The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 *et seq.* and Subtitle H of the Internal Revenue Code of 1954, 26 U.S.C. §§9001 *et seq.*, as amended, provide, *inter alia*, for public disclosure of receipts and expenses of candidates and political committees involved in federal primary and general elections, funding of primary and general campaigns of presidential candidates and nominees, and the setting of overall campaign expenditure limits.

12. The COMMISSION is empowered to prescribe rules and regulations to carry out the provisions of the FECA and Subtitle H. 2 U.S.C. §§438(a)(10) and 438(d) and 26 U.S.C. §§9009 and 9039.

13. Before any such rule or regulation may be put into effect, the statute purports to require the COMMISSION to transmit to the Senate, the House of Representatives or both, as the case may be, a statement setting forth the proposed rule or regulation and a detailed explanation of it. 2 U.S.C. §438(c)(1) and 26 U.S.C. §§9009(c)(1) and 9039(c)(1).

14. Statements concerning a rule or regulation dealing with required reports or statements by a candidate for the office of Senator, and by political committees supporting such a candidate, must be transmitted to the Senate. Statements concerning a rule or regulation dealing with required reports or statements by a candidate for the office of Representative, Delegate, or Resident Commissioner, and by political committees supporting such a candidate, must be transmitted to the House of Representatives. 2 U.S.C. §438(c)(3).

15. All other statements must be transmitted to both the House of Representatives and the Senate. 2 U.S.C. §438(c) and 26 U.S.C. §§9009(c) and 9039(c).

16. If within 30 legislative days after receipt of such a statement, a House of Congress disapproves the rule or regulation, or any portion thereof which that body determines to be a single separable rule of law, then the COMMISSION may not put into effect such rule or regulation, or portion thereof which has been disapproved. 2 U.S.C. §438(c)(2), (c)(4) and 26 U.S.C. §§9009(c)(2), (c)(4) and 9039(c)(2), (c)(4).

#### CONSTITUTIONAL INFIRMITIES

17. The one-house veto provisions of the Federal Election Campaign Act of 1971, as amended, identified in paragraphs 13-16 above, violate the constitutional principle of separation of powers as embodied in Articles I, II and III of the United States Constitution.

18. The one-house veto provisions illegally and unconstitutionally permit the evasion of the Presidential veto requirements of Article I, §7, clauses 1, 2 and 3 of the United States Constitution.

19. The one-house veto provisions constitute an unlawful and unconstitutional delegation of legislative power to one House of Congress.

20. The one-house veto provisions are in derogation of Article I of the Constitution in purporting to endow a House of Congress with powers outside of those specifically enumerated in the Constitution.

21. If permitted to operate, the challenged provisions will deprive the President of the United States of powers

committed to his office and the Executive Branch of government by the Constitution and will allow each House of Congress to separately perform legislative acts in derogation of Articles I and II of the Constitution.

22. The United States has no adequate remedy at law.

WHEREFORE, plaintiff-intervenor, the United States of America, prays that the Court declare, adjudge and decree that the one-house veto provisions of the Federal Election Campaign Act of 1971, as amended – 2 U.S.C. §438(c) and 26 U.S.C. §§9009(c) and 9039(c) – be and are unconstitutional.

REX E. LEE

Assistant Attorney General

EARL J. SILBERT

United States Attorney

DAVID J. ANDERSON

DENNIS LINDER

ALEXIS PANAGAKOS

Attorneys, Department of Justice  
Washington, D.C. 20530  
739-3336

Attorneys for Intervenor,  
United States of America

---



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Caption omitted in printing]

[Dated Aug. 23, 1976]

Civil Action No. 76-1227

ANSWER OF DEFENDANT VALEO

Defendant Francis R. Valeo, Secretary of the United States Senate, for answer to the numbered paragraphs of the complaint states as follows:

1. In answer to paragraph 1, defendant Valeo states that the allegations in this paragraph describe the claims of the plaintiff, which claims are denied. Defendant Valeo avers that the relief sought by the plaintiff would frustrate the federal election campaign reforms which would otherwise be achieved through the administration and enforcement of the Federal Election Campaign Act of 1971, as amended, (hereinafter the "FECA"), especially during the primary and general elections of 1976 in which plaintiff is a candidate.

2. The allegations of paragraph 2 are denied. Defendant Valeo avers that, in the absence of a "case or controversy" required by Article III of the Constitution, no jurisdiction can accrue to this Court under 2 U.S.C. § 437(h), 26 U.S.C. § 9011(b), and 28 U.S.C. § 1331.

3. The allegations of paragraph 3 are denied. Defendant Valeo avers that in the absence of a "case or controversy" required by Article III of the Constitution the convocation of a three judge district court is not required with respect to any issues concerning public financing of campaigns for the Presidency, Subtitle H of the Internal Revenue Code of 1954, 26 U.S.C. §§ 9001 *et seq.*, as

amended, (hereinafter "Subtitle H"), or 28 U.S.C. § 2282 (now repealed), and that certification to the United States Court of Appeals for the District of Columbia is not required with respect to any other matter in the absence of a "case or controversy" required by Article III of the Constitution.

4. (a) Defendant Valeo admits that plaintiff asserts he is a candidate for the nomination of the Democratic Party for United States Senator from the State of New York, and that plaintiff asserts that he is a registered voter in the State of New York in the Democratic Party. Defendant Valeo has no knowledge or information sufficient to form a belief as to whether plaintiff is, in fact, a citizen of the State of New York and eligible to vote in elections for the office of the President of the United States.

(b) For answer to the allegations in paragraph 4(b), defendant Valeo admits only that plaintiff seeks the nomination of the Democratic Party for the office of United States Senator from New York, that Bella Abzug is one of 435 members of the House of Representatives, and that James Buckley is one of 100 members of the United States Senate. Defendant Valeo denies the remaining allegations and avers that unless a resolution of disapproval of any regulations of the Federal Election Commission (hereinafter the "Commission") is reported to and made the pending business of the Senate, no member of the Senate can vote either for or against the disapproval of such regulations, and that Senator Buckley does not serve as a member of the Committee to which such regulations are referred for report and recommendation to the Senate. Defendant Valeo is informed and believes that Representative Abzug is, similarly, not a member of the Committee of the House of Represen-



tatives to which proposed regulations transmitted by the Commission to the House of Representatives are referred. Defendant Valeo further avers that proposed regulations of the Commission pertaining to elections to the House of Representatives are transmitted to the House, regulations pertaining to elections to the Senate are transmitted to the Senate, and regulations affecting the election of the President are transmitted to both Houses of Congress, and that, therefore, Representative Abzug has not and will not have the opportunity to vote on proposed regulations of the Commission pertaining to elections to the Senate except to the extent they also pertain to elections to the House of Representatives or for President. Defendant Valeo further avers that, except with respect to regulations affecting Presidential campaign funding, most regulations proposed by the Commission relating to the disclosure of campaign contributions and expenditures apply to the primary and general elections for all federal offices, rather than to elections to the Senate or to the House of Representatives, and, therefore, treat all candidates for federal office alike.

5. Defendant Valeo admits that he is the duly selected Secretary of the United States Senate, that he is an ex officio, nonvoting member of the Commission, and that he has the official responsibilities provided by 2 U.S.C. § 438(d)(1) and (d)(2). Defendant Valeo avers that, as a nonvoting member of the Commission and as an officer but not a member of the United States Senate, he is not authorized to participate in the decision of the Commission to transmit proposed regulations to the United States Senate or in the recommendation or action by the Senate or any of its Committees with respect thereto.

6. Defendant Valeo admits that defendant Henshaw is the duly elected Clerk of the United States House of Rep-

resentatives, that he is an ex officio, nonvoting member of the Commission, and that he has the official responsibilities provided by 2 U.S.C. § 438(d)(1) and (d)(2). Defendant Valeo avers upon information and belief that, as a nonvoting member of the Commission and as an officer but not a member of the United States House of Representatives, defendant Henshaw is not authorized to participate in the decision of the Commission to transmit proposed regulations to the United States House of Representatives or in the recommendation or action by the House or any of its Committees with respect thereto.

7. The allegations of paragraph 7 are admitted.

8. The allegations of paragraph 8 constitute plaintiff's restatement of the provisions of the statute. To the extent they are accurate, they are admitted, except that clause (d) is, on its face, inaccurate and is denied.

9. The allegations in paragraph 9 are denied in that they misstate the provisions of the statute referred to therein. Section 9009 of Title 26 U.S.C. provides that the Commission is authorized to prescribe rules and regulations only to carry out the functions and duties imposed on it by said chapter. Section 9039 of Title 26 provides that the Commission is authorized to issue rules and regulations only to carry out its responsibilities under that chapter. Neither section provides that the Commission is authorized to prescribe rules and regulations to carry out the provisions of subtitle H, except as they apply to such functions and duties or responsibilities. Defendant Valeo further avers that the authority of the Commission to prescribe rules and regulations under section 438(a)(10) and 438(d) of Title 2 U.S. Code is expressly limited to rules and regulations which are prescribed in accordance

with the provisions of Section 438(c) of Title 2 United States Code, and that the Commission has no authority to prescribe rules and regulations except in compliance with subsection 438(c).

10. The allegations in paragraph 10 are admitted, and defendant Valeo avers that the requirement that a proposed rule or regulation and a detailed explanation of it be transmitted to Congress is a means of providing notice and opportunity for comment on such proposed rule or regulation by the Senate or the House of Representatives, or both, as the case may be.

11. The allegations in paragraph 11 are admitted.

12. The allegations in paragraph 12 are admitted, and defendant Valeo avers that under the scheme of FECA said statements and proposed rules include rules and regulations applicable to primary and general elections for President and are required, therefore, under the system of checks and balances provided in the Constitution which apply even between the two Houses of Congress, to be transmitted to both Houses of Congress. Defendant Valeo further avers on information and belief that any of said statements which affect primary and general elections for President are also transmitted to the Office of the President for comment and that comments from political parties and other interested members of the public are solicited with respect to all proposed rules and regulations.

13. The allegations of paragraph 13 purport to state the provisions of various sections of an Act of Congress. Defendant Valeo denies that said allegations accurately state the provisions of the statutes referred to in said paragraph.

14. For answer to the allegations in paragraph 14, defendant Valeo denies that said allegations accurately state the

events referred to therein, and denies, on information and belief, that office accounts usually consist in part of excess campaign funds. Defendant Valeo further avers that the consideration by the Senate of the two regulations proposed by the Commission referred to in said paragraph is set out in Senate Report 94-409 and in the proceedings of the Senate for October 8, 1975; that said Report states:

"However, the Committee is of the opinion that the regulation would be acceptable if it were drafted in such form as to treat every Federal officeholder, non-Federal officeholder, and other potential candidates equally.

\* \* \*

Also, it should apply to every individual who becomes a candidate for nomination or election to Federal office." (Report, pp. 3-4);

that Senators having no office account and Senators whose office accounts consisted solely of their personal funds also voted to reject the amendment which would have had the effect of approving the modified version of the regulation; and that 50 percent more Senators who would be candidates for reelection this year voted in favor of said amendment (18) than voted against said amendment (13). A copy of said Senate proceedings for October 8, 1975, is attached hereto as Exhibit A. [Not reproduced]

15. For answer to paragraph 15, defendant Valeo denies the allegations in the first sentence and further denies any implication that the regulation referred to was designed by the Commission to favor non-incumbent candidates for office, as opposed to incumbents. Defendant Valeo avers that, as set out in the letter of the Clerk of the House placed in the record of the proceedings of the House for



October 22, 1975, a copy of which is attached hereto as Exhibit B, under the procedures used by the Secretary and the Clerk the copies of statements and reports filed with them are made available simultaneously with no delay for their use and the use of the Commission. Defendant Valeo admits the allegations in the second and third sentences and further avers that while all members of the House of Representatives from New York would be up for reelection this year if they choose to run, 13 members of the House of Representatives from the State of New York voted against the resolution to disapprove the proposed regulation of the Commission and 23 members of the House of Representatives, including Representatives Abzug, Addabbo, Ambro, Badillo, Biaggi, Bingham, Chisholm, Delaney, Hanley, Holtzman, Horton, Kemp, Koch, LaFalce, Ottinger, Pattison, Pike, Rangel, Rosenthal, Scheuer, Stratton, Wolff and Zeferetti, voted in favor of the resolution of disapproval, and that no inference can be drawn from such vote that it deprived plaintiff of due process of law under the Fifth Amendment to the United States Constitution. Defendant Valeo further avers on information and belief that Representative Abzug joined a bipartisan group of more than 60 members of the House of Representatives in an amendment to make changes in the composition of the Commission and to eliminate congressional committee veto of the Commission's regulations so that its independence would be assured, that a variation of this amendment was accepted by the committee and presented to the House as a committee amendment and was adopted by a vote of 391 to 25 with Representative Abzug voting in favor of the amendment.

16. For answer to paragraph 16, defendant Valeo admits the allegations in the first two sentences and denies the allegations in the second two sentences of that paragraph.

17. The allegations in paragraph 17 are denied.

18. The allegations of paragraph 18 are denied because any rules and regulations proposed by the Commission may be prescribed by the Commission unless disapproved by the appropriate House of Congress within 30 legislative days after receipt of such proposed regulation by such body.

19. The allegations of paragraph 19 are denied, and defendant Valeo avers that the Commission by public notice in the Federal Register and by submission of proposed rules to the Congress, actively solicits comments on such proposed rules from all interested persons for the purpose of assuring that any rules finally prescribed are fair and equitable.

20. The allegations in paragraph 20 are denied and defendant Valeo avers that under the Constitution a single House of Congress can disapprove any proposal submitted by the Commission to Congress, or to either House thereof, including a proposal under 438(c), and, thereby, deny to the President the opportunity to veto such Congressional action, and he further avers that, in any event, no Congressional action is required after the Commission submits its proposed rules to Congress to permit the Commission to prescribe such proposed rules, and that in such event there also would be no Congressional action for the President to be denied the opportunity to veto.

21. The allegations in paragraph 21 are denied, and defendant Valeo avers that the rules and regulations of the Commission are not "laws," and he further avers that the FECA does not discriminate against plaintiff, but, instead, applies equally to incumbents and challengers.

22. The allegations of paragraph 22 are denied, and defendant Valeo avers that under the Constitution either House

of Congress may disapprove or refuse to adopt any proposal submitted to it and that the Congress of the United States in which all legislative powers granted by the Constitution are vested cannot constitutionally impose on either House standards or criteria governing the exercise by such House of its functions.

23. The allegations of paragraph 23 are denied and defendant Valeo avers that the provisions of FECA and Subtitle H referred to therein in fact provide plaintiff an opportunity to challenge and have set aside proposed regulations of the Commission which might otherwise cause him irreparable injury and unconstitutional impairment of his rights in that plaintiff and other voters can elect members of Congress who they anticipate will act in accordance with their views and defeat candidates or refuse to reelect members of Congress who they anticipate will not act in accordance with their views.

#### AFFIRMATIVE DEFENSES

1. The plaintiff has failed to state a claim upon which relief can be granted, particularly in that the requested injunction requiring the defendant Commission's rules and regulations to become effective upon adoption by the Commission has no relationship to the stated claim that the plaintiff is entitled "to have laws affecting him enacted by the full legislative process."

2. The grant of the declaratory and injunctive relief requested would require the Judicial Branch, in violation of Article III of the Constitution and the constitutional doctrine of separation of powers, to rewrite substantive and procedural provisions of a statute which has been enacted by the Congress and signed by the President.

3. The plaintiff lacks standing to bring this action, having alleged no injury in fact with respect to the Congressional veto of any Commission rule or regulation applicable to him as a voter or candidate for office and having otherwise alleged no "case or controversy" within the meaning of Article III of the Constitution of the United States.

4. The plaintiff lacks standing to assert or litigate the question whether the President of the United States has been denied the opportunity to veto any Congressional action disapproving rules and regulations adopted by the Federal Election Commission.

5. In the absence of a "case or controversy" and in the absence of any alleged injury in fact stemming from a Congressional veto of a specific rule or regulation of the Commission that would affect the plaintiff as a voter or candidate for office, the Court lacks jurisdiction over the subject matter of this action, and it lacks jurisdiction to certify any constitutional questions to the Court of Appeals or to request the convening of a three judge district court.

#### PRAYER

WHEREFORE, the defendant Valeo prays that this Court deny all relief that the plaintiff has requested, including the requests that certain constitutional questions be certified to the United States Court of Appeals for the District of Columbia Circuit and that application be made for the convening of a three judge district court to hear other issues.

The defendant Henshaw [sic] further prays that this Court dismiss the complaint with prejudice, and award the defendant Valeo the taxable costs and attorneys fees resulting from the bringing of this action by the plaintiff.



Respectfully submitted,

/s/ Cornelius B. Kennedy  
Kennedy & Webster  
888 17th Street, N.W.  
Washington, D.C. 20006  
(202) 298-8208  
Attorneys for Francis R. Valeo,  
Secretary of the Senate

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Caption omitted in printing]

[Dated August 23, 1976] Civil Action No. 76-1227

ANSWER OF DEFENDANT  
EDMUND L. HENSHAW, Jr.

The defendant Edmund L. Henshaw, Jr., Clerk of the United States House of Representatives, answers the numbered paragraphs of the complaint as follows:

1. Defendant Henshaw denies all allegations in paragraph 1 that purport to describe the plaintiff's claims, constitutional or otherwise. Defendant Henshaw avers that the plaintiff has no standing to assert any claimed violation of the constitutional doctrine of separation of powers or any claimed destruction of the constitutional system of checks and balances established by Articles I, II and III of the United States Constitution. Defendant Henshaw further avers that the plaintiff has alleged no injury in fact, with reference to a Congressional veto of a specific regulation affecting the plaintiff as a voter or candidate for office, that entitles him to assert

any deprivation of Due Process of Law under the Fifth Amendment of the United States Constitution.

2. Defendant Henshaw denies all the jurisdictional allegations of paragraph 2, including the allegation that the amount in controversy, exclusive of interests and costs, exceeds \$10,000. Defendant Henshaw avers that, in the absence of a "case or controversy" within the meaning of Article III of the United States Constitution, no jurisdiction can accrue to this Court under 2 U.S.C. §437h, 26 U.S.C. §9011(b), or 28 U.S.C. §1331.

3. Defendant Henshaw denies all the jurisdictional and procedural allegations of paragraph 3. Defendant Henshaw avers that, in the absence of a "case or controversy" within the meaning of Article III of the United States Constitution, the convening of a three judge district court is not required by 26 U.S.C. §9011 or 28 U.S.C. §2282 (now repealed) with respect to the Subtitle H issues, and that certification of all other issues to the United States Court of Appeals for the District of Columbia Circuit is not required and cannot be had. Defendant Henshaw specifically avers that 28 U.S.C. §2282 was repealed when, on August 12, 1976, the President signed into law S.537 (94th Cong., 1st Sess.).

4(a). Defendant Henshaw, on information and belief, admits that the plaintiff is a candidate for the Democratic nomination for United States Senator from the State of New York. Defendant Henshaw has no knowledge or information sufficient to form a belief as to whether the plaintiff is in fact a citizen of the State of New York and of the United States, or is eligible to vote in elections for the office of the President of the United States, or is a registered voter in the State of New York in the Democratic Party.

4(b). Defendant Henshaw, on information and belief, admits that, in the primary for the Democratic nomination for United States Senator from the State of New York, the plaintiff is opposed by, among others, Bella Abzug, a sitting Member of the United States House of Representatives. Defendant Henshaw further admits, on information and belief, that James Buckley is a sitting member of the United States Senate from the State of New York, but asserts that it is entirely premature at this point to admit or deny that either the plaintiff or the said James Buckley will be involved, or opposed to each other, in the general election in November of 1976. Defendant Henshaw further avers that Rep. Bella Abzug is not a member of any Committee of the House of Representatives to which proposed regulations of the defendant Commission, to the extent that they are referable to the House, are or will be referred, and that unless a resolution of disapproval of any such regulations is reported to and made the pending business of the House of Representatives, Rep. Bella Abzug is not authorized to and cannot vote on whether to disapprove such regulations. Defendant Henshaw further avers, on information and belief, that Senator Buckley does not serve on any Committee of the Senate to which proposed regulations of the defendant Commission, to the extent that they are referable to the Senate, are or will be referred, and that unless a resolution of disapproval of any such regulations is reported to and made the pending business of the Senate, Senator Buckley is not authorized to and cannot vote on whether to disapprove such regulations.

5. Defendant Henshaw admits that the defendant Valeo is the duly elected Secretary of the United States Senate, that he is an ex officio, non-voting member of the defendant Commission, and that he has the official responsibility set forth in 2 U.S.C. §438(d)(1) and (d)(2).

6. Defendant Henshaw admits that he is the duly elected Clerk of the United States House of Representatives, that he is an ex officio, non-voting member of the defendant Commission, and that he has the official responsibilities set forth in 2 U.S.C. §438(d)(1) and (d)(2).

7. Defendant Henshaw admits the allegations of paragraph 7 of the complaint.

8. Defendant Henshaw denies that any of the powers of the defendant Commission are set forth in 2 U.S.C. §438 (a) (10), and avers that the sections of the Federal Election Campaign Act that do set forth the powers of the defendant Commission speak for themselves. See, e.g., 2 U.S.C. §437d.

9. Defendant Henshaw avers that the provisions of 2 U.S.C. §§438(a)(10) and 438(d), and 26 U.S.C. §§9009 and 9039 speak for themselves.

10. Defendant Henshaw avers that the provisions of 2 U.S.C. §438(c)(2) and 26 U.S.C. §§9009(c)(1) and 9030(c)(1) speak for themselves.

11. Defendant Henshaw avers that the provisions of 2 U.S.C. §438(c)(3) speak for themselves.

12. Defendant Henshaw avers that the provisions of 2 U.S.C. §438(c) and 26 U.S.C. §§9009(c) and 9039(c) speak for themselves.

13. Defendant Henshaw avers that the provisions of 2 U.S.C. §438(c)(2), (c)(4), and 26 U.S.C. §§9009(c)(2), (c)(4) and 9039(c)(2), (c)(4), speak for themselves. Defendant Henshaw denies the allegation in paragraph 13 of the complaint that these statutory sections provide that the defendant Commission "may not put into effect" any rule or regulation or portion thereof that has been disapproved by a body of the Congress.

14. Defendant Henshaw denies the allegations in paragraph 14 of the complaint insofar as they purport to be an accurate account of the events referred to therein. He specifically denies the allegation describing office accounts as "usually consisting in part of excess campaign funds." He further denies the allegation that a modified version of the referenced regulation, as transmitted to the Congress on September 30, 1975, was "intended to comply with certain suggestions made by Members of Congress." Defendant Henshaw avers, on information and belief, that the reasons for the Senate's disapproval of the two regulations in question are accurately set forth in Senate Report 94-409 and in the proceedings of the Senate for October 8, 1975.

15. Defendant Henshaw, while admitting the allegation in paragraph 15 of the complaint that the House of Representatives disapproved the referenced regulation on October 22, 1975,

(1) Denies the allegation that the members of the House of Representatives and the Senate have a "special privilege of filing [reports and statements] in the first instance with the Clerk of the House and the Secretary of the Senate, respectively, which privilege delays for at least a week reporting and investigations by the FEDERAL ELECTION COMMISSION." Defendant Henshaw avers that all such reports and statements by both incumbent and non-incumbent candidates, which are filed in the first instance with the Clerk of the House and the Secretary of the Senate, are immediately copied on microfilm and the microfilm copies are transmitted simultaneously to the defendant Commission and to the respective body of the Congress.

(2) Denies the allegation that Rep. Bella Abzug, "an opponent of plaintiff CLARK in the New York primary for

the Democratic Party nomination for Senator, voted to disapprove the regulation," to the extent that the allegation implies that her vote to disapprove in any way constituted a violation of plaintiff's right to Due Process of Law under the Fifth Amendment of the United States Constitution. Defendant Henshaw further denies any implication in paragraph 15 of the complaint that the regulation in question was designed by the Commission to favor non-incumbent candidates for office, as opposed to incumbent members of the House of Representatives and the Senate, or that the disapproval of the regulation by the House of Representatives in any way violated plaintiff's right to Due Process of Law under the Fifth Amendment of the United States Constitution.

16. Defendant Henshaw admits the allegations contained in the first two sentences of paragraph 16 of the complaint. As to the third sentence, defendant Henshaw avers that the provisions of 2 U.S.C. §437(g)(3) speak for themselves and that the plaintiff's summary thereof is inaccurate and incomplete. Defendant Henshaw denies the allegation in the fourth sentence, inasmuch as the defendant Commission did in fact submit rules and regulations to the Congress on or about August 3, 1976.

17. Defendant Henshaw denies the allegations in paragraph 17 of the complaint, inasmuch as proposed rules and regulations have been approved by the defendant Commission and submitted to the appropriate bodies of the Congress on or about August 3, 1976.

18. Defendant Henshaw avers that the allegations of paragraph 18 of the complaint are an incomplete and inaccurate summarization of the procedures therein referred to. The procedures are set forth in 2 U.S.C. §438(c) and 26 U.S.C.



§§9009(c) and 9039(c), the provisions of which speak for themselves.

19. Defendant Henshaw denies the allegations of paragraph 19 of the complaint. Defendant Henshaw avers that, while the defendant Commission does consult with members of the Congress and their staffs (as well as all other interested persons) as to the substance of proposed regulations, such consultation is not designed to cause the Commission to modify proposed rules to correspond "with what its members perceive to be the desires and wishes of Members of Congress." Defendant Henshaw further avers that at no time has the Commission, as the result of such consultations, modified proposed rules "in such a way as to give incumbent candidates for Congress an advantage in elections over non-incumbent candidates for Congress."

20. Defendant Henshaw denies each and every allegation in paragraph 20 of the complaint. In particular, he avers that any Congressional action with respect to disapproving the defendant Commission's proposed rules is not an Order, Resolution or Vote to which the Concurrence of the Senate and House of Representatives may be necessary," within the meaning of Article I, Section 7, Clause 3, of the Constitution, so as to be subject to veto by the President of the United States.

21. Defendant Henshaw denies each and every allegation in paragraph 21 of the complaint. In particular, he avers that Congressional actions with respect to disapproving the Commission's proposed rules are not "laws . . . enacted by the full legislative process," and hence are not subject to Presidential veto pursuant to the Presentation Clause of the Constitution, Article I, Section 7, Clause 3. Defendant Henshaw further avers that the Federal Election Campaign Act,

on its face and as applied to the plaintiff, does not in any way "discriminate against plaintiff by allowing incumbent officeholders, but not challengers, to veto rules and regulations of the COMMISSION."

22. Defendant Henshaw denies each and every allegation of paragraph 22 of the complaint. In particular, he avers that Article I of the Constitution does not require that the Congress, by statute, impose on either House of Congress standards or criteria for exercising the discretionary aspects of its various legislative functions and actions.

23. Defendant Henshaw denies each and every allegation of paragraph 23 of the complaint. In particular, he avers that the actions of the defendants complained of in the complaint have no conceivable effect, and none has been alleged, on the plaintiff's right "to vote, to participate effectively in the political process and to compete without discrimination in the electoral process." He further avers that the allegation in paragraph 23 of the complaint that the plaintiff "will suffer irreparable injury" unless the prayed relief is granted is insufficient, without identifying some specific Commission rule or regulation affecting the plaintiff that has been vetoed by the Congress, to constitute or support a cause of action.

#### AFFIRMATIVE DEFENSES

1. The plaintiff has failed to state a claim upon which relief can be granted, particularly in that the requested injunctions requiring the defendant Commission's rules and regulations to become effective upon adoption by the Commission has no relationship to the stated claim that the plaintiff is entitled "to have laws affecting him enacted by the full legislative process."

2. The grant of the requested declaratory and injunctive relief would require the judiciary, in violation of Article III of the Constitution of the United States and the constitutional doctrine of separation of powers, to rewrite substantive and procedural provisions of a statute that has been enacted by Congress and signed by the President of the United States.

3. The plaintiff lacks standing to bring this action, having alleged no injury in fact with respect to the Congressional veto of any Commission rule or regulation applicable to him as a voter or candidate for office, and having otherwise alleged no "case or controversy" within the meaning of Article III of the Constitution of the United States.

4. The plaintiff lacks standing to assert or litigate the question whether the President of the United States has been denied the opportunity to veto any Congressional action disapproving rules and regulations adopted by the Federal Election Commission.

5. In the absence of a "case or controversy" and in the absence of any alleged injury in fact stemming from a Congressional veto of a specific rule or regulation of the Commission that would affect the plaintiff as a voter or candidate for office, the Court lacks jurisdiction over the subject matter of this action, and it lacks jurisdiction to certify any constitutional questions to the Court of Appeals or to request the convening of a three-judge district court.

#### PRAYER

WHEREFORE, the defendant Henshaw prays that this Court deny all relief that the plaintiff has requested, including the requests that certain constitutional questions be certified to the United States Court of Appeals for the District

of Columbia Circuit and that application be made for the convening of a three-judge district court to hear other issues.

The defendant Henshaw further prays that this Court dismiss the complaint with prejudice, and award the defendant Henshaw the taxable costs and attorneys fees resulting from the bringing of this action by the plaintiff.

Respectfully submitted,

/s/ Eugene Gressman  
Eugene Gressman  
1828 L Street, N.W.  
Washington, D.C. 20036  
466-8400

Counsel for Edmund L. Henshaw, Jr.,  
Clerk of the United States  
House of Representatives

Dated:  
August 23, 1976

#### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Caption omitted in printing]

[Dated August 24, 1976]

Civil Action No. 76-1227

#### ANSWER

1. Defendant, Federal Election Commission (hereafter "the Commission") denies that the contested provisions of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. §431, *et seq.*) (hereafter "the Act") and Subtitle H of the Internal Revenue Code of 1954, as amended (26 U.S.C. §9001, *et seq.*) (hereafter Subtitle H) deprive plaintiff of any

right or privilege protected by the Constitution of the United States or the amendments thereto.

2. The Commission denies that this Court has jurisdiction over the action and denies that there is any amount in controversy between the parties.

3. The Commission denies that 26 U.S.C. §9011 requires the convocation of a three-judge court for issues with regard to Subtitle H of the Internal Revenue Code. The Commission also denies that 28 U.S.C. §2282 requires the convening of a three-judge court both because such a court is not required under the terms of the statute and because it has been repealed since the filing of the complaint. The Commission also denies that 2 U.S.C. §437h requires certification of all other issues to the United States Court of Appeals for the District of Columbia.

4. On information and belief, the Commission admits the allegations of paragraph 4a and b, except to state that it is uncertain whether plaintiff Clark will participate in the general election and who his opponents will be in the event that he does.

5. The Commission admits the allegation of paragraph 5.

6. The Commission admits the allegation of paragraph 6.

7. The Commission admits the allegation of paragraph 7.

8. The Commission admits that it has power with regard to the matters enumerated in paragraph 8, as well as other powers, but submits that those powers are set forth not in 2 U.S.C. §438(a)(10) but in the body of the relevant statutes, 2 U.S.C. §431, *et seq.* and 26 U.S.C. §9001, *et seq.*

9. The Commission admits the allegations of paragraph 9.

10. The Commission admits the allegation of paragraph 10.

11. The Commission admits the allegations of paragraph 11.

12. The Commission admits the allegation of paragraph 12.

13. The Commission admits the allegation of paragraph 13, except to state that the words of the statute are not that it may not put into effect rules or regulations disapproved under the statute but that it "may not prescribe" any disapproved rule or regulation. 2 U.S.C. §438(c)(2), 26 U.S.C. §§9009(c)(2) and 9039(c)(2).

14. The Commission admits the allegation of paragraph 14, except to state that (a) while the regulation was modified in light of the comments received those changes were not done "to comply with certain suggestions made by Members of Congress" and (b) while excess campaign funds have in the past been deposited by Members of Congress in their office accounts, the Commission has insufficient knowledge to conclude that this is "usually" the practice.

15. The Commission admits the allegations of paragraph 15 as to the submission and disapproval of regulations relating to the point of entry for reports and statements, but denies (1) that there is any special privilege for filing in the first instance with the Clerk of the House of Representatives or the Secretary of the Senate, except that the Federal Election Campaign Act provides that all reports and statements relating to all candidates for the Senate, incumbents and non-incumbents shall be filed with the Secretary of the Senate and all reports and statements relating to all candidates for the House, incumbents and non-incumbents shall be filed with the Clerk of the House, and (2) that



the filing in the first instance with the Clerk of the House and the Secretary of the Senate results in a delay of a week in reporting any investigations, since the reports are immediately sent out to be copied onto microfilm, and copies of the microfilm are transmitted simultaneously to the Commission and the respective body of Congress.

16. The Commission admits the allegations of paragraph 16, but states that on August 3, 1976, subsequent to the filing of the complaint, rules and regulations were submitted to Congress.

17. The Commission denies the allegations of paragraph 17, on the grounds that on August 3, 1976, subsequent to the filing of the complaint, the Commission gave final approval to a set of rules and regulations and submitted them to Congress.

18. The Commission admits the allegations of paragraph 18, except to state that the words of the statute are not that it may not put into effect rules and regulations disapproved under the statute but that it may not prescribe such rules and regulations.

19. The Commission denies that it has or will modify proposed rules and regulations to give incumbent candidates for Congress an advantage over non-incumbent candidates for Congress and, while agreeing that it consulted with and will consult with Members of Congress and members of the staff of Congress on the substance of regulations, denies that it writes those rules and regulations to conform with what its members perceive to be the desires and wishes of Members of Congress.

20. The Commission denies that the Act and Subtitle H of the Internal Revenue Code deprive plaintiff of any rights

under the United States Constitution as alleged in paragraphs 20 through 23 of the complaint.

WHEREFORE, the Commission states that this Court has no jurisdiction over this action and that no relief can be had upon the allegations of the complaint and respectfully submits that this Court should accordingly dismiss the complaint and deny any relief.

Respectfully submitted,

/s/ John G. Murphy, Jr.  
JOHN G. MURPHY, JR.  
GENERAL COUNSEL

/s/ William Oldaker  
WILLIAM OLDAKER

/s/ Charles N. Steele  
CHARLES N. STEELE

Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463  
Telephone: 382-5657

---

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Caption omitted in printing]

[Dated September 2, 1976]

Civil Action No. 76-1227

AMENDED ANSWER OF FRANCIS R. VALEO,  
SECRETARY OF THE SENATE

---

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, defendant Francis R. Valeo, Secretary of the Senate

amends the first sentence of paragraph 14 of his Answer, served the 23rd day of August, 1976, to read as follows:

14. For answer to the allegations in paragraph 14, defendant Valeo denies that said allegations accurately state the events referred to therein, and denies, on information and belief, that office accounts usually consist in part of excess campaign funds and that Senator James Buckley "himself has an office account" or had at that time an office account covered by such proposed regulation. \* \* \*

Respectfully submitted,

/s/ Cornelius B. Kennedy  
 Cornelius B. Kennedy  
 Kennedy, Webster & Gardner  
 888 17th Street, N.W.  
 Washington, D.C. 20006  
 (202) 298-8208  
 Attorneys for Francis R. Valeo  
 Secretary of the Senate

Dated: September 2, 1976

UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF COLUMBIA

[Caption omitted in printing]

[Dated September 3, 1976] Civil Action No. 76-1227

ORDER

This case came before the Court on September 2, 1976, on plaintiffs' motion to certify certain constitutional questions to the Court of Appeals, pursuant to 2 U.S.C. § 437h

(a). Upon consideration of the arguments of counsel, the complaint and answers thereto, the extensive requests for admissions and responses thereto, the stipulation of all parties, the briefs filed prior to oral argument on this matter, and the full record herein, and it appearing to the Court that there are no genuine issues with respect to the facts necessary for certification, it is, by the Court, this 3rd day of September, 1976,

ORDERED, that plaintiffs' motion for certification of certain constitutional questions be, and the same hereby is, granted; and it is

FURTHER ORDERED, that the following constitutional questions immediately be, and the same hereby are, certified to the United States Court of Appeals for the District of Columbia, pursuant to 2 U.S.C. § 437h(a):

1. Does this action challenging the constitutionality of § 315(c) of the Federal Election Campaign Act (FECA), 2 U.S.C. § 438(c), and §§ 9009(c) and 9039(c) of Subtitle H of Internal Revenue Code of 1954, 26 U.S.C. §§ 9009(c) and 9039(c), present a justiciable case or controversy under Article III of the United States Constitution?

2. Do 2 U.S.C. § 438(c), and 26 U.S.C. §§ 9009(c) and 9039(c), which allow a single House of Congress to disapprove rules and regulations, or selected portions thereof, adopted by the Federal Election Commission, violate the principles of separation of powers and checks and balances established by Articles I, II, and III of the Constitution; are they in derogation of the Presidential veto power in Article I of the Constitution; and are they in excess of the legislative powers enumerated in Article I of the Constitution?

3. Do the challenged provisions specified in questions one and two violate the right of a candidate for Federal office to Due Process of Law under the Fifth Amendment of the United States Constitution by: a) depriving him of the right to have laws affecting him enacted by the full legislative process, including passage by both Houses of Congress with the opportunity for a Presidential veto; and, b) invidiously discriminating against him in allowing incumbent officeholders, but not challengers, to veto rules and regulations of the Commission?

4. Do the challenged provisions violate the Constitution by delegating the discretion to disapprove regulations of the Federal Election Commission to a single House of Congress without fixing any standards or criteria to govern the exercise of such discretion and without requiring any statement of reasons for the exercise of such discretion?

5. Do the challenged provisions, by allowing a single House of Congress to disapprove rules and regulations, or selected portions of such rules and regulations, adopted by the Federal Election Commission, create an extra-Constitutional legislative process in [violation of Article I?]

And it is

FURTHER ORDERED, that the attached "Stipulation as to Findings of Fact," which is incorporated by reference herein, be, and the same hereby is, certified to the Court of Appeals as this Court's findings of fact necessary for certification; and it is

FURTHER ORDERED, that the Clerk of the District Court shall deliver forthwith to the Clerk of the Court of Appeals the record in the above-captioned action.

/s/ Charles R. Richey  
Charles R. Richey  
United States District Judge

Date: September 3, 1976

---

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Caption omitted in printing]

[Dated: Sept. 3, 1976]

Civil Action No. 76-1227

STIPULATION AS TO FINDINGS OF FACT

The parties herein jointly stipulate to the following facts for the purposes of this litigation:

PARTIES

1. On July 1, 1976, plaintiff Ramsey Clark filed this action seeking declaratory and injunctive relief regarding certain provisions of the Federal Election Campaign Act of 1971, 2 U.S.C. §§ 431, *et seq.*, as amended, (hereinafter the "FECA") and Subtitle H of the Internal Revenue Code of 1954, 26 U.S.C. §§ 9001, *et seq.*, as amended, (hereinafter "Subtitle H") and against their administration and enforcement by defendants. The complaint alleges and the defendants deny that these provisions, which provide that the defendant Federal Election Commission ("Com-



mission") may prescribe regulations if the appropriate body of Congress does not disapprove such regulations within thirty legislative days after transmittal to Congress, violate the constitutional doctrine of separation of powers and destroy the constitutional system of checks and balances established by Articles I, II and III of the United States Constitution and deprive plaintiff Ramsey Clark of Due Process of Law under the Fifth Amendment of the United States Constitution.

2. Plaintiff Ramsey Clark is an individual eligible to vote in the 1976 election for the office of President of the United States.

3. The plaintiff Clark is a candidate for the Democratic Party nomination for United States Senator from the State of New York in the primary election scheduled for September 14, 1976.

4. In the primary for the Democratic nomination for Senator, plaintiff Clark is opposed by, among others, Bella Abzug, a sitting Member of the United States House of Representatives.

5. As a Member of the House of Representatives, Ms. Abzug is authorized to vote, has voted and will continue to have the opportunity to vote on any resolution to disapprove regulations of the Commission affecting elections for the United States Senate, when they also affect elections for United States President, Representative or Resident Commissioner.

6. Representative Abzug is not a member of any Committee of the House of Representatives to which proposed regulations of the defendant Commission, to the extent that they are referable to the House, are or will be referred. Unless a resolution of disapproval of any such

regulations is reported to and made the pending business of the House of Representatives, Representative Abzug is not authorized to and cannot vote on whether to disapprove such regulations.

7. Mr. James Buckley, a sitting Member of the United States Senate from the State of New York, is the candidate of the New York State Conservative Party in the general election for the Senate seat which he presently holds, and is also a candidate for the Republican Party nomination for the Senate seat which he presently holds.

8. As a Member of the Senate, Mr. Buckley is authorized to vote, has voted, and will continue to have the opportunity to vote on any resolution to disapprove regulations of the Commission when they affect elections to the United States Senate.

9. Senator Buckley does not serve on any Committee of the Senate to which regulations of the defendant Commission, to the extent that they are referable to the Senate, are or will be referred. Unless a resolution of disapproval of any such regulations is reported to and made the pending business of the Senate, Senator Buckley is not authorized to and cannot vote on whether to disapprove such regulations.

10. The winner of the Democratic Party nomination for United States Senator from the State of New York will oppose Senator Buckley in the general election.

11. The United States, plaintiff-intervenor herein, join plaintiff Clark in seeking a declaration of the unconstitutionality of the one-house veto procedure contained in 2 U.S.C. § 438(c)(2), (c)(4) and 26 U.S.C. §§ 9009(c)(2), (c)(4) and 9039(c)(2), (c)(4), alleging, *inter alia*, that the challenged provisions permit evasion of the Presidential

veto requirements, are in derogation of the legislative powers enumerated in Article I of the Constitution, and violate the constitutional principle of separation of powers as embodied in Articles I, II, and III of the United States Constitution.

12. Defendant Francis R. Valeo is the duly elected Secretary of the United States Senate whose duties include furnishing certain services and facilities to, and cooperating with, the Commission in carrying out the Commission's duties. 2 U.S.C. § 483(c)(2) [sic]. He is also custodian for the Commission of certain reports and statements submitted pursuant to rules and regulations prescribed by the Commission. 2 U.S.C. § 438(d)(1). Defendant Valeo is an *ex officio* Member of the Federal Election Commission. 2 U.S.C. § 437c(a)(1).

13. Defendant Edmund L. Henshaw, Jr., is the duly elected Clerk of the United States House of Representatives whose duties include furnishing certain services and facilities to, and cooperating with, the Commission in carrying out the Commission's duties. 2 U.S.C. § 438(d)(2). He is also custodian for the Commission of certain reports and statements submitted pursuant to rules and regulations prescribed by the Commission. 2 U.S.C. § 438(d)(1). Defendant Henshaw is an *ex officio* Member of the Commission. 2 U.S.C. § 437c(a)(1).

14. Defendant Commission was established by § 208(a), Pub. L. 93-443, 88 Stat. 1280, and reconstituted by 2 U.S.C. § 437c. In addition to defendants Valeo and Henshaw, who are *ex officio* members without a right to vote, the Commission is composed of six voting members appointed by the President of the United States, by and with the advice and consent of the Senate. 2 U.S.C. § 437c.

## THE STATUTORY FRAMEWORK

15. The Commission is empowered to prescribe regulations to carry out the provisions of FECA and the functions and duties imposed on it by Subtitle H. 2 U.S.C. §§ 438(a)(10), 438(c) and 438(d) and 26 U.S.C. §§ 9009 and 9039.

16. All regulations are initially drafted by the Commission's staff based on, *inter alia*, the statutes, their legislative history, and comments received from the public. All regulations are then published in the Federal Register for public comment. Thereafter, comments are received both in public hearings, when held, and in written submissions. Regulations are then discussed at public Commission meetings, and subsequently redrafted in the light of those discussions and subsequent comments received, and resubmitted for further Commission deliberation. This process continues until the Commission finally approves regulations.

17. Before any such regulation may be put into effect, the Commission must transmit to the Senate or the House of Representatives, as the case may be, a statement setting forth the proposed regulation and a detailed explanation and justification of it. 2 U.S.C. § 438(c)(1) and 26 U.S.C. §§ 9009(c)(1) and 9039(c)(1).

18. Statements concerning regulations dealing with required reports or statements by a candidate for the office of Senator, and by political committees supporting such a candidate, must be transmitted to the Senate. 2 U.S.C. § 438(c)(3).

19. Statements concerning regulations dealing with required reports or statements by a candidate for the office of Representative, Delegate, or Resident Commissioner,



and by political committees supporting such a candidate, must be transmitted to the House of Representatives. 2 U.S.C. § 438(c)(3).

20. All other statements must be transmitted to both the House of Representatives and the Senate. 2 U.S.C. § 438(c) and 26 U.S.C. §§ 9009(c) and 9039(c).

21. If within thirty legislative days after receipt of such a statement, a body of the Congress disapproves any regulation, or any portion thereof which the body determines to be a single separable rule of law, then the Commission may prescribe any regulation not disapproved and may not prescribe any regulation, or portion thereof, which has been disapproved. 2 U.S.C. § 438(c)(2), (c)(4) and 26 U.S.C. §§ 9009(c)(2), (c)(4) and 9039(c)(2), (c)(4).

#### CONGRESSIONAL DISAPPROVAL: OFFICE ACCOUNTS REGULATIONS

22. On July 30, 1975, the defendant Commission, pursuant to 2 U.S.C. § 438(c), referred to both the House of Representatives and the Senate proposed regulations relating to the disclosure of contributions to and expenditures from office accounts of federal office-holders, and making such contributions and expenditures subject to the limitations of 18 U.S.C. §§ 608, 610, 611, 613 through 617. These sections of the Criminal Code were later stricken from Title 18 and inserted in the Federal Election Campaign Act, as amended, at 2 U.S.C. §§ 441a - 441j. Pub. L. 94-233.

23. Office accounts were defined in the proposed regulations as accounts used to support the activities of a federal office-holder, but not including franking accounts

and funds appropriated by the Congress for legislative activities. (40 Fed. Reg. 32951).

24. Some Members of Congress have in the past put excess campaign funds into office accounts and the proposed regulations were designed in part to require the reporting of such funds.

25. On August 1, 1975, Senator Stevens, and Senator Johnston and five other Senators, including both the majority and minority leaders, noted that in their judgment "the proposal clearly conflicts in many important ways with the Congressional intent in authorizing constituent services accounts under the FECA" and requested an extension of 15 days for the comment period, since most Members of Congress were away during the intervening period. Congresswomen Mink and Holtzman made similar requests for extensions.

26. On August 5, 1975, the same regulations were published in the Federal Register for public comment before September 4, 1975 (40 Fed. Reg. 32951).

27. On August 8, 1975, Wayne Hays, Chairman of the House Administration Committee to which the proposed regulations had been referred, wrote the Commission indicating that in his view the Commission should complete review of its proposed regulations in light of public comment and any public hearings before submitting them to Congress.

28. On August 22, 1975, the Commission extended the time for public comments and scheduled public hearings on the regulations for September 16 and 17, 1975.

29. At the public hearings, testimony totalling 200



pages of transcript was received from eight witnesses; in addition, several written comments were received.

30. The regulations were redrafted by the Commission after receiving public comments and requests for guidance, including 22 requests from Members of Congress, as to how the new campaign law affected office accounts.

31. On September 30, 1975, after receiving public comment, the defendant Commission referred a second version of the same regulations to both the House and the Senate.

32. The letters of transmittal and the explanation and justification transmitted with the regulations are the Commission's statement of the reasons for the Commission's regulations.

33. Public hearing on the first and second versions of the regulation were held by the Committee on Rules and Administration of the United States Senate on October 2, 1975.

34. On October 6, 1975, the Committee submitted Senate Resolution 275 to disapprove both regulations, accompanied by a report, with dissenting views. (S. Rep. No. 94-409, 94th Cong., 1st Sess.)

35. On October 8, 1975, when the resolution was before the Senate, an amendment was offered the effect of which would have been to approve the second version of the office account regulation. The Senate by a single vote rejected the amendment. Senators voting against the amendment included Senator Buckley. Following the vote on the amendment, the Senate by voice vote agreed to the resolution as submitted (121 Cong. Rec. 17888 (daily ed. Oct. 8, 1975)).

## CONGRESSIONAL DISAPPROVAL OF DOCUMENT-FILING REGULATIONS

36. On August 1, 1975, defendant Commission sent to both the House and the Senate regulations providing for the filing of original copies of all campaign reports and statements with the Commission before transmittal to the House and the Senate as a means of compliance with the statutory requirement that such reports and statements "shall be received by the Clerk of the House [and the Secretary of the Senate] as custodian[s] for the Commission." 2 U.S.C. § 438(d)(1)(A) & (B).

37. On August 6, 1975, the Commission published the document-filing regulations in the Federal Register for public comment before September 5, 1975 (40 Fed. Reg. 33169).

38. The Chairman of the Commission, Thomas Curtis, met in early October 1975, with the Chairman of the House Administration Committee, Representative Wayne Hays, to discuss, *inter alia*, the document-filing regulations.

39. Discussions were held between August 1, 1975 and October 22, 1975, between representatives of the Commission and representatives of the House Administration Committee on the document-filing regulations.

40. On October 22, 1975, the House of Representatives, by House Resolution 780, disapproved by a vote of 257 to 148 the document-filing regulations. (121 Cong. Rec. 10185-98 (daily ed. Oct. 22, 1975)).

41. Representative Abzug voted to disapprove the regulations (121 Cong. Rec. 10197 (daily ed. Oct. 22, 1975)).

### OTHER 1975 REGULATIONS

42. On December 2, 1975, a second version of the document-filing regulations (H. Doc. No. 94-314, 94th Cong., 1st Sess.) and a third version of the office accounts regulations (H. Doc. 94-313, 94th Cong., 1st Sess.) were transmitted to both the House and the Senate. Additional proposed regulations were transmitted to Congress by the Commission on December 3, 1975, and January 19, 1976.

43. In connection with the various regulations that the Commission proposed in 1975, comments and testimony were received and considered from Members of Congress, counsels for the National Committees of the major political parties, business and labor groups and representatives of State committees, various "public interest" groups and the public at large.

### BUCKLEY V. VALEO AND 1976 FECA AMENDMENTS

44. At the time the Supreme Court issued its decision in *Buckley v. Valeo*, (Nos. 75-436 and 437) on January 30, 1976, neither the House nor the Senate had taken action to disapprove any of the regulations described in paragraph 42, above, nor had thirty legislative days expired.

45. The Commission decided, after the decision in *Buckley v. Valeo*, that, even though the thirty legislative days had passed since the regulations were submitted to Congress and no resolution of disapproval had been passed, it would be inappropriate for the Commission to prescribe any regulations prior to Congressional action on bills then pending to reconstitute the Commission as an independent agency.

46. On May 11, 1976, the Federal Election Campaign Act Amendments of 1976 (Pub. L. 94-283, 90 Stat. 475) were enacted. They require, *inter alia*, that regulations approved by the Commission before it was reconstituted by the enactment of the 1976 Amendments would become operative only in the event that they were thereafter transmitted to the Senate and House, as appropriate, and that neither the Senate nor the House took action disapproving such regulations within thirty legislative days following their submission to the Congress.

47. On May 11, 1976, President Ford signed the Federal Election Campaign Act Amendments of 1976 and made certain comments with respect thereto which appear at 12 Weekly Comp. of Pres. Docs. 857 (1976).

### REGULATIONS UNDER AMENDED FECA AND SOLICITATION OF VIEWS BY THE COMMISSION

48. On May 26, 1976, the Commission published comprehensive proposed regulations in the Federal Register governing such matters as disclosure of contributions, limitations on both contributions and expenditures, corporate and union political activity, office accounts, matching funds to candidates in presidential primaries, convention financing, and issuance of advisory opinions and compliance procedures (41 Fed. Reg. 21572).

49. Publication of the proposed regulations was the culmination of preliminary drafting by the Commission's staff during which copies of the proposed drafts, while not formally published for the public, were widely distributed. Copies were placed in the Commission's library where they were available to the public, drafting meetings

were open meetings in the Commission's hearing room, and copies were distributed, not only to the Commissioners, including the *ex-officio* members, and the staff, but to interested members of the public.

50. The Commission purchased 5,000 reprints of the Federal Register containing the proposed regulations and distributed them to the public. Of those, over 400 were sent to all persons who had testified, submitted comments, or requested information on the 1975 regulations; over 200 were sent to other persons who had contacted the Commission on official business in 1975, *e.g.*, by requesting advisory opinions; over 1,600 were distributed in response to public requests for them by mail; 2,000 were sent to the Public Records Offices of the Senate and the House for distribution there, and the remainder were distributed by the Commission's Public Records Office to individuals who asked for them there.

51. In addition, the Commission staff answered over the telephone through its information services and legal advice services, approximately 1,200 requests for information about the regulations.

52. The Commission held twelve seminars throughout the country as part of its ongoing program to contact the public about the election laws, between the initial publication of the regulations and their final adoption, at which the regulations were discussed by Commissioners and members of both the Staff Director's office and the General Counsel's staff. Copies of the proposed regulations were made available at these meetings both by the Commission and various groups which reproduced them and the problems uncovered by the drafting process were discussed and suggestions were invited.

53. Public hearings were held on June 7, 8, 9 and 10 on the proposed regulations, resulting in 263 pages of testimony from 45 witnesses. In addition, in connection with the public hearings, 28 submissions, containing over 360 pages of comments were received.

54. Briefing sessions were held by members of the General Counsel's staff in early June 1976 for members of the Congressional staffs to explain the regulations and to solicit comments on them.

55. Briefing sessions were also held for other interested groups.

56. Individual Commissioners or senior staff members attended at least six meetings scheduled by various groups interested in election law at which the regulations were discussed and comments were solicited.

57. The Commission solicited public comment until Monday, June 14, 1976 (41 Fed. Reg. 21572).

58. Public comment was in fact received and considered until the Commission approved the final regulations in late July, prior to their submission to the Congress.

#### FEC'S TENTATIVE APPROVAL OF REGULATIONS

59. Beginning on June 17, 1976, the regulations drafted by the Commission staff were the subject of formal discussions at Commission meetings. Commission meetings on the regulations were held on: June 17, 1976, June 21 through June 25, 1976, June 29 through July 1, 1976, July 6 through July 10, 1976, July 21, 1976, July 29, 1976, and July 30, 1976.



60. Copies of the revised drafts discussed at the agenda meetings were routinely made available to the public by various methods. Copies were placed in the Commission library. Copies of the agenda items were routinely distributed to the Democratic and Republican National Committees as well as to Congressional offices and other groups which had expressed interest in receiving them, *e.g.*, the AFL-CIO, the NAM and the Chamber of Commerce. Karen Fling, the editor of Plus Publications' "Campaign Practices Reports" was routinely supplied with the agenda items, attended the Commission meetings, and discussed the proposed regulations in the "Campaign Practices Reports." Similarly, William Hurst of the CCH Federal Election Campaign Financing Guide received agenda material for use in that publication. Copies of the regulations were distributed for persons attending the agenda meetings. Approximately 30 press requests were filled for copies of the regulations, including regular requests from specific reporters as well as AP, UPI, the New York Times, the Washington Post and the Washington Star.

61. By the end of the week ending Friday, June 25, 1976, defendant Commission had considered all of the regulations drafted by the staff governing disclosure, contribution and expenditure limitations, independent expenditures, compliance procedures, advisory opinion procedures, and office accounts. In its consideration the Commission reached tentative decisions as to which sections had been approved, which sections needed redrafting, and which sections would have to be considered further. Transcripts of relevant portions of the June 25th meeting, among others, will be submitted to the court as expeditiously as possible.

62. These decisions of the Commission permitted those regulations to be cited as representing the Commission's

present understanding of the law in answers to requests for opinions from the public on the effect of the Federal Election Campaign Act of 1971, as amended, on the election campaigns then in progress. In addition, the Commission continued to consider changes in the regulations, both those suggested by the staff on the basis of its realization that sections needed clarification and revision and those suggested on the basis of outside comments. The Federal Election Campaign Act Amendments of 1976 required all previous opinions to be codified as rules and regulations within 90 days of May 11, 1976 (Pub. L. 94-283, Section 108(b)). Opinions given expressly noted that the regulations had not yet been adopted by the Commission, and that the answers given were therefore based on the Commission's interpretation of the meaning of the provisions of the law and not on the regulations.

#### PROCEDURES LEADING TO COMMISSION'S FINAL ADOPTION OF 1976 REGULATIONS

63. At a meeting held on July 8, 1976, the Commission staff specifically suggested to the Commission that if it "wanted to indicate some preliminary approval, that language indicating preliminary approval could be inserted in the letters we're sending out, based on these proposed regulations in the form of opinions, information letters."

64. The record of that meeting also reflects that the discussions with staff personnel from the two Congressional committees, scheduled as part of the drafting process, could not be held until July 21st, after the recess for the Democratic National Convention. Accordingly, the Commission did not transmit to Congress the regulations it had tentatively approved until after meeting with the staffs of the Congressional Committees. Relevant portions

of this transcript will be submitted to the court.

65. Thereafter, on the afternoon of July 27, 1976, members of the staffs of the Commission and the House Committee on House Administration met to discuss these regulations and possible revisions.

66. On the morning of July 28, 1976, the staff of the Commission met with the staff of the Senate Committee on Rules and Administration to discuss these regulations, and to solicit comments and suggestions about them.

67. On Thursday, July 29, and Friday, July 30, 1976, defendant Commission met to consider suggested amendments to its proposed regulations.

68. At these meetings, amendments were considered, some of which were passed.

69. Some of the proposed amendments related to suggestions made by the staffs of the respective Congressional committees, and some of these were passed.

70. The revisions to the regulations proposed by the staff included ones that were entirely unrelated to suggestions made by the staffs of the respective Congressional committees.

71. The suggested revisions were formally proposed by the staff of the Commission, under the direction of the General Counsel of the Commission.

72. The General Counsel did not concur with all of the recommendations made by the staffs of the Congressional committees and those not agreed with were therefore not recommended by him to the Commission.

73. Some revisions proposed by the General Counsel were rejected by the Commission.

74. One of the amendments adopted at these meetings modified the office accounts regulations, so that reports would have to be filed no more often during election years than during other years (twice), and so that the reporting date for office accounts would differ from that for other reports.

75. At the July 29th meeting, the staff indicated to the Commission that various objections had been voiced by Congressional staff members in the meetings, including the objections that (1) having office accounts due on the same date as the October 10 quarterly report for political campaign funds was burdensome and might result in having those reports confused with the campaign fund reports, and (2) requiring reports four times a year in election years would result in an unequal, greater, burden for House members than for Senate members since House members would have to report five times in two years, whereas Senators would only have to report nine times in six years.

76. The Commission decided at the end of the discussions to change the reporting dates from April 10 to April 15 and from October 10 to October 15, and to require reports in all years — election and non-election — to be filed on those twice-yearly dates.

77. During the meetings of July 29 and July 30, 1976, the Commission gave the regulations final approval, as modified.

78. Earlier, on June 25, 1976, the Commission had, after a drafting process like that described for other regu-

lations, published proposed regulations governing presidential general election financing in the Federal Register for public comment in connection with public hearings to be held on July 7, 1976 (41 Fed. Reg. 26396). These regulations govern only the funding for the presidential general elections under Subtitle H. Final Commission approval of these regulations occurred in time to submit them to Congress with the other regulations described in the previous paragraphs.

TRANSMITTAL OF 1976 REGULATIONS  
TO CONGRESS

79. On August 3, 1976, the proposed regulations approved by the Commission were transmitted to both the House and the Senate to give them the opportunity to disapprove them any time during the next thirty legislative days.

80. On August 25, 1976, these regulations were published in the Federal Register (41 Fed. Reg. 35931), and reprinted with the Commission's explanation and justification as H. Doc. 94-573, 94th Cong., 2d Sess. (1976).

81. As of the date of these findings, the thirty legislative days have not yet expired as to the regulations presently pending before the Congress.

Respectfully submitted,

/s/ Larry P. Ellsworth  
Larry P. Ellsworth  
Attorney for Plaintiff Ramsey Clark

/s/ Alexis Panagakos  
Alexis Panagakos  
Attorney for Plaintiff-Intervenor  
United States of America

/s/ Cornelius B. Kennedy  
Cornelius B. Kennedy  
Attorney for Defendant  
Francis R. Valeo

/s/ Eugene Gressman  
Eugene Gressman  
Attorney for Defendant  
Edmund L. Henshaw, Jr.

/s/ Charles N. Steele  
Charles N. Steele  
Attorney for Defendant  
Federal Election Commission

Dated: September 2, 1976  
-----

FEDERAL ELECTION COMMISSION

COMMISSION MEETING OF JULY 8, 1976  
- PARTIAL TRANSCRIPT

Tape #4A

*Chairman Thomson:* Is there anything further on 100 to 108? (pause) Very well, we'll move to Part 111 - Compliance. And we'll start around the table as we did in 100 to 108.

*Commissioner Harris:* Shouldn't we have some accounting, Mr. Chairman, as to what we do about 108 at this point, I mean a - is that adopted for transmission or where are we?

*Chairman Thomson:* Well, we have - you brought in anything to be added to your master?



*General Counsel Murphy:* Yes sir. The — I would not recommend to the Commission that you use in any of these sections more than what might be styled preliminary approval at this point, since our discussions with the staff people on the Hill may very well lead to proposals in which I would concur and bring to the Commission as a recommendation or this Commission may wish to take up on its own. Any final adoption up to this point would accordingly be subject to another final adoption, and that seems to me not the best procedure. On the other hand, if you wanted to indicate some preliminary approval, that language indicating preliminary approval could be inserted in the letters we're sending out, based on these proposed regs in the form of opinions, information letters.

*Chairman Thomson:* Well, I think you're right, but I'm beginning to wonder at what date we'll get any input from the Hill. The House staff has gone to the convention, as I understand it.

*Commissioner Tiernan:* Well, it's my understanding that they are reviewing these regulations now, Mr. Moss and —.

*Chairman Thomson:* Moss has gone to the convention.

*Commissioner Tiernan:* I mean Moss has gone, but Russ —.

*Chairman Thomson:* Isn't Eddie there? I hope so.

*Commissioner Tiernan:* Yeah, and Doug Patton and some of the others. The Minority Counsel is also participating.

*General Counsel Murphy:* I'm sure Cooper is with them.

*Commissioner Tiernan:* Cooper, yeah.

*General Counsel Murphy:* The — as we understand, the

earliest that they'd be prepared to sit down with us, however, is the 21st.

*Commissioner Aikens:* (inaudible) . . . on page three on this proposal?

*General Counsel Murphy:* Yeah, that's in Part 110. We'll get there tomorrow.

*Chairman Thomson:* If we have to wait 'til the 21st to have them sit down with us, we aren't going to get these up there until August.

*Commissioner Tiernan:* Mr. Chairman, I think there's no question we would like to get on with this as soon as possible, but I think in just this review that we've been making, indicates, you know, in the haste to get them up there, we may be doing a disservice to the Commission. And as anxious as all of us are to get them before the Congress, I would — I would be one that would want to make sure that we thoroughly review these even after the staff generally had some consultation with the House members and the Senate, whatever way they're going to do it, but still not rush these regulations through because, we've spent a great deal of time already on them, and I think another week or so isn't going to make make [sic] a difference. I know the time schedule, Jack, that you have is to get it in line before the election, but on the other hand if we get it up there and we find that we've missed something, I'm sure even if we take up another week, we still may miss something.

*General Counsel Murphy:* Well, it's an extraordinarily complex series of documents.

*Commissioner Tiernan:* — We're dealing with a hell of a lot of regulations. And your staff, I'm sure has tax on them.

*General Counsel Murphy:* That's a good part of the detail.

*Vice Chairman Harris:* Mr. Chairman, could I ask something on this? We've got the explanation and justification. That refers to Parts 100 to 105, 109 to 111, but it's attached to 100-108. See right at the back of —.

*General Counsel Murphy:* It's — there has to be some kind of a typo, Commissioner Harris because if you look at the text, it goes from 100 through 108, and does not refer to 109. I suspect that what happened Carol Binette who handled the major portion of the typing of this, was doing 100 to 108 at one point the same day she turned out 111 and put a cover sheet on it. The 105 is merely a typo.

*Vice Chairman Harris:* Pardon me, 100 to 108?

*General Counsel Murphy:* Yes, and strike the one — and 109 through 111.

*Chairman Thomson:* Does the Commission desire to express any degree of approval on the — 100 to 108? Do you want to give it preliminary approval?

*Vice Chairman Harris:* Semi — semi-final.

*Commissioner Aikens:* Semi-final.

*General Counsel Murphy:* I think I'd like for you to authorize in preparing letters to insert language that what I'm saying to whoever is getting letters is based on the regulations' preliminary approval, approved by the Commission — that gives it a little edge of belief.

*Chairman Thomson:* Well, do you want to vote on preliminary approval or do you want to approve it by unanimous consent? If no objection, the Part 100-108 receives preliminary approval by the Commission by unanimous consent.

Now we'll proceed with Compliance Procedure — Part 111.

*Commissioner Staebler:* Before you leave the subject of when things are going to get looked at, would any part of this get any attention before the twenty-first?

*Chairman Thomson:* Well, Bob says that some of the boys up there are looking at it now or will be looking at it.

*Commissioner Tiernan:* It's my understanding that Doug Patton and Russ and Cooper who is the new or on the minority staff of the House Administration, worked on this yesterday or last night or sometime afterward. And they've been doing it and they made some indications of areas that where there are some — there being some difficulties, but I think they may be explainable by meetings with the staff people as to what was the intention of the language. There may be some areas that will not be subject to being resolved by them and our staff. There may be a question that Jack will have to present to us in the sense that, well, you know, that there is alternatives and we'll have to make a decision at that point.

*Commissioner Staebler:* The twenty-first then becomes — is significant for what occasion?

*Commissioner Tiernan:* The date that, I think the Chairman or Mr. Murphy suggested as — for final approval and was not so you can get them up to the Hill.

*Chairman Thomson:* No, the date Jack says that the staff on the Hill would be willing or ready to sit down and talk about them, am I right?

*General Counsel Murphy:* Yes sir. Now it may be that that's the first time that Bob Moss is free, and in the meantime, we may be able to have some discussions with Russ

and Tom Cooper. We could certainly try that.

*Harriet Robnett:* And what are you, presuming you'll meet with the Senate Rules Committee staff at the same time?

*General Counsel Murphy:* Yes, although I'm sure Ed Hall is getting awfully sick of this subject.

*Harriet Robnett:* I know, I understand, but I, nevertheless, think that might.

*General Counsel Murphy:* Oh sure, absolutely, absolutely. No, the delay is occasioned by the House Administration staff. Yes, presence at the convention.

*Commissioner Tiernan:* So what would be your projection, the twenty-second, assuming that's if we meet with Moss and them or not.

*General Counsel Murphy:* It would very much depend on whether they have many or only few problems, and —.

*Commissioner Tiernan:* The few problems, then you could bring in on the following Thursday?

*General Counsel Murphy:* Well, that's a Wednesday.

*Commissioner Tiernan:* Oh, that's a Wednesday?

*General Counsel Murphy:* I think that's a Wednesday.

*Chairman Thomson:* It is, the 19th is Monday.

*General Counsel Murphy:* It's conceivable we could iron out — we could iron out —.

*Commissioner Tiernan:* We could have it on Tuesday or Monday.

*General Counsel Murphy:* Wednesday and Thursday, I'll have the material circulated to the Commission Thursday afternoon for action Friday, that's possible. And then transmission after final typing will be Monday or Tuesday. That may be optimistic, but that seems to be possible. (pause)

*Chairman Thomson:* Are you ready with one one one (111)?

---

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Caption omitted in printing]

[Dated: January 21, 1977] Civil Action No. 76-1227

JUDGMENT

This three-judge court was convened according to 28 U.S.C. § 2284, pursuant to 26 U.S.C. § 9011(b) as to matters within the purview of Chapter 95 of Subtitle H of the Internal Revenue Code of 1954, including the challenged review provision, § 9009(c), and pursuant to 28 U.S.C. § 2282\* as to matters within the purview of Chapter 96, including challenged review provision § 9039(c). The complaint herein was in effect bifurcated, and referred both to the Court of Appeals en banc pursuant to 2 U.S.C. § 437h, and in part to this three-judge court.

---

\* Since repealed, section 2282 was in effect at the time this suit was instituted and applies to it. See *Clark v. Valeo*, \_\_\_\_ F.2d \_\_\_\_ (1977).



The portion of the claim referred to this three-judge court concerns plaintiffs' prayer for a declaratory judgment respecting, and an injunction restraining the operation of, two legislative review provisions of Subtitle H, §§ 9009(c), 9039(c), above, on grounds of repugnance to the Constitution of the United States.

This Court has considered the evidence submitted, the findings of fact made by the District Judge to whom the request for a court of three judges was presented, the briefs and oral arguments of counsel. In accordance with the judgment of the United States Court of Appeals for the District of Columbia Circuit dismissing the complaint referred to that Court en banc,, and the opinions in support thereof, this date filed in No. 76-1825, Clark v. Valeo, \_\_\_\_ F.2d \_\_\_\_ (1977),

It is, this 21st day of January, 1977,

ADJUDGED AND ORDERED by this Court that this action be and hereby is dismissed and that this three-judge court is hereby dissolved.

/s/ J. Skelly Wright  
J. Skelly Wright  
United States Circuit Judge

/s/ Harold Leventhal  
Harold Leventhal  
United States Circuit Judge

/s/ Charles R. Richey  
Charles R. Richey  
United States District Judge